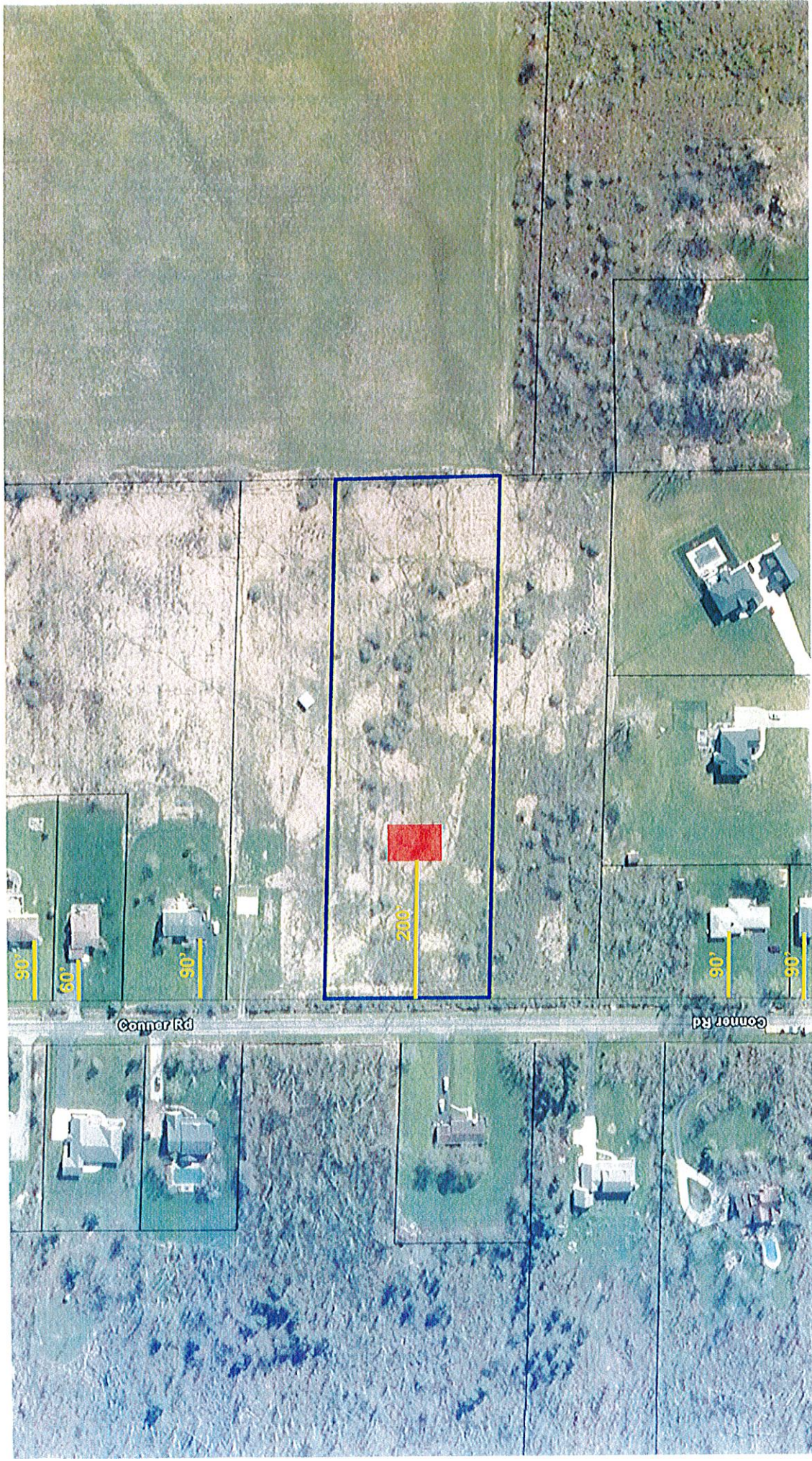


[illegible]



note the parcel lines displayed are approximate

Proposed 200' principal structure front yard setback fronting Conner Road.
The established front yard setback along Conner Road within 500' is 84'.



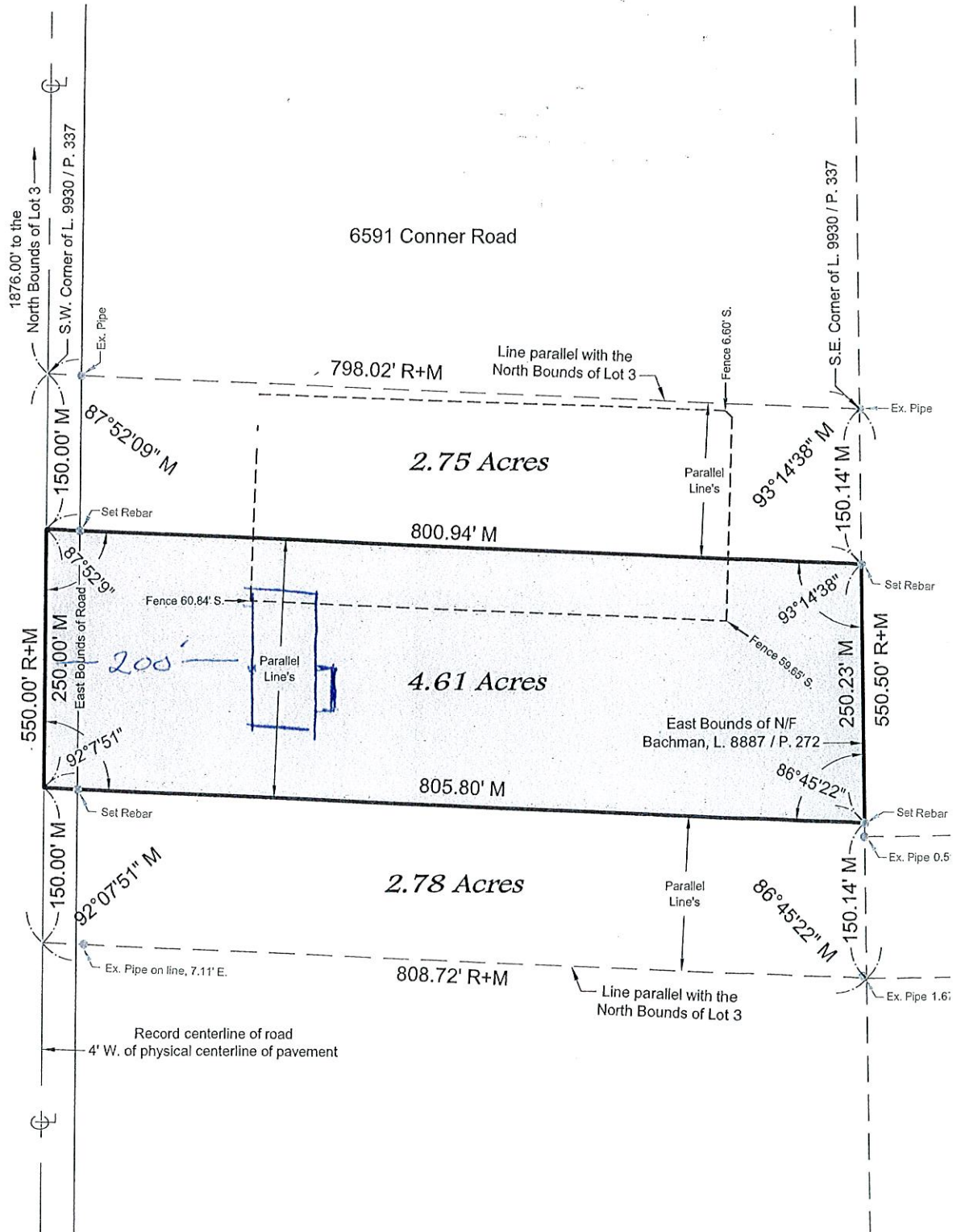
6571 Conner Road
Part of SBL: 43.08-2-4.12

[illegible]

200 FT SETBACK.

Conner Road

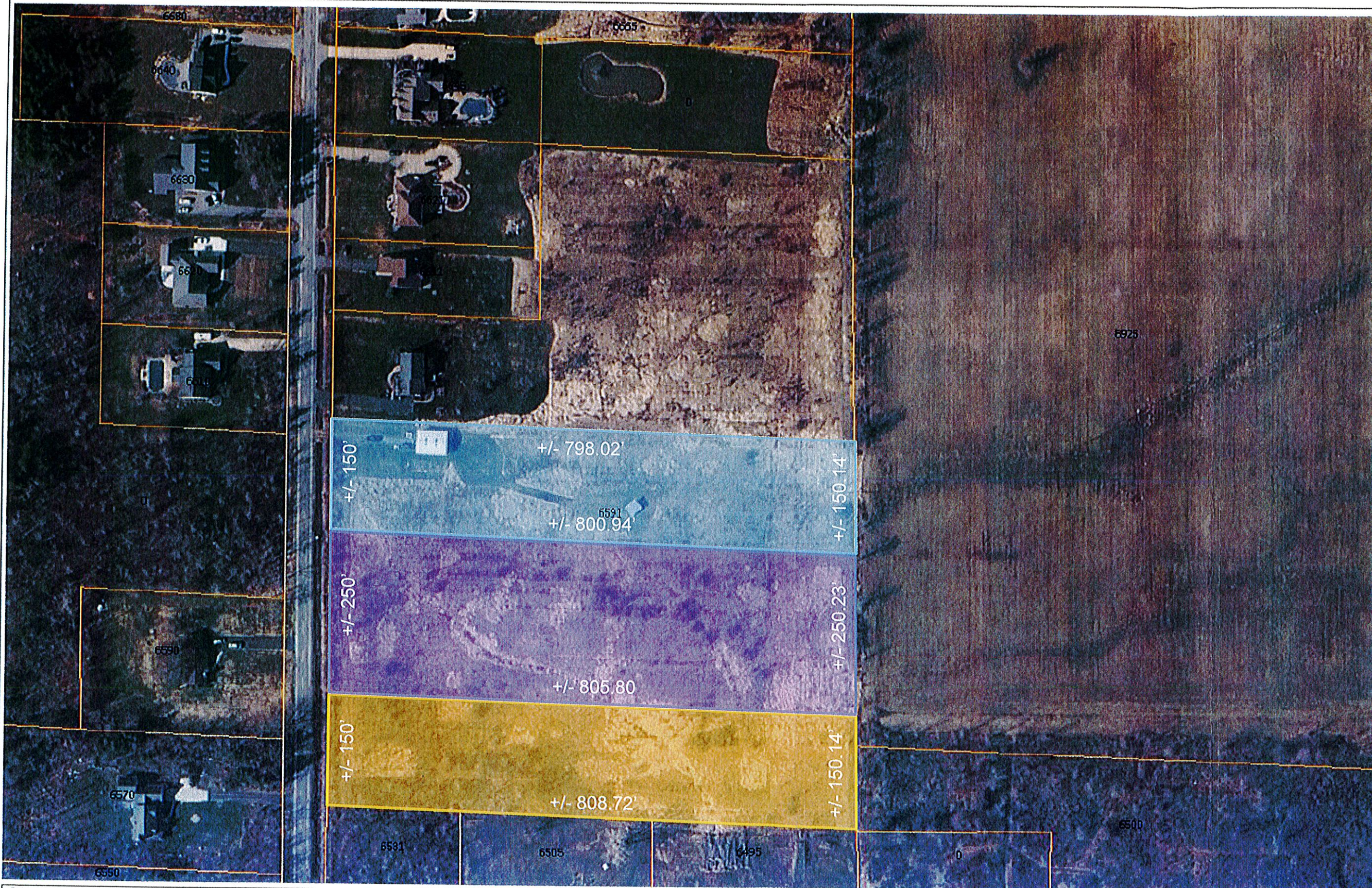
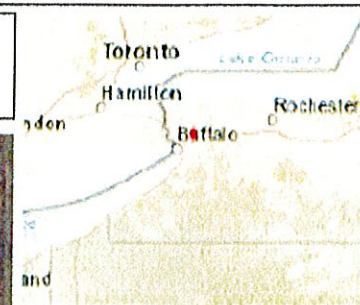
(66' ROW)








Proposed Configuration

Erie County On-Line Mapping Application



-  Parent Parcel
+/- 2.75 Acres
-  Lot 1
+/- 4.61 Acres
-  Lot 2
+/- 2.78 Acres

NOTE:
This map is not
an official
property survey.

0.1 0 0.04 0.1 Miles

WGS_1984_Web_Mercator_Auxiliary_Sphere
THIS MAP IS NOT TO BE USED FOR NAVIGATION

ERIE COUNTY
DEPARTMENT OF ENVIRONMENT & PLANNING
OFFICE OF GIS

This map is a user generated static output from an
Internet mapping site and is for reference only. Data
layers that appear on this map may or may not be
accurate, current, or otherwise reliable.

1:2,257

Item 1

Severyn Development, Inc.
Agricultural-Rural Residential

Requests a Minor Subdivision of Land to create two (2) new lots located at 6591 Conner Road.

DISCUSSION:

Mr. Bleuer introduced this project, located at 6591 Conner Road, located on the east side of Conner Road and south of County Road. It is an existing 10.17-acre vacant parcel located in the Agricultural Rural-Residential zone.

The applicant is requesting a Minor Subdivision of land to create two (2) new building lots.

The proposed lot configuration would consist of:

- Parent Parcel: 2.75 acres with a frontage along Conner Road measuring 150'.
- Lot 1: 4.61 acres with frontage along Conner Road measuring 250'.
- Lot 2: 2.78 acres with frontage along Conner Road measuring 150'.

The Planning Board has authority to act on this request, after an action through the State Environmental Quality Review Act.

Bill Severyn with Severyn Development was present to represent the request. Mr. Severyn explained that their plan is to create a minor subdivision with dividing and establishing 2 additional building lots on Conner Road.

Mr. Severyn noted that there was an existing out-building barn located on the property that has been removed.

Regarding the Part 1 Short Environmental Assessment Form (EAF), Mr. Geasling asked Mr. Severyn if the project site is located on or adjacent to an area designated or sensitive to any archaeological sites, or wetlands.

Mr. Severyn responded that there are no archaeological sites that he is aware of. Additionally, they have reviewed the area with the Town of Clarence and there are no wetlands on the property.

Mr. Geasling confirmed that Mr. Severyn is familiar with the 20 ft. drainage easement at the rear of the entire property that the Town has requested.

Mr. Severyn responded yes.

Mr. Geasling asked Mr. Severyn what the intention is with the property if the minor subdivision of land is approved.

Mr. Severyn responded, explaining that they are currently working with a buyer for the property that plans to build a home on the center parcel. Severyn Development will construct that home as well as a single-family home on each of the other two lots.

DB 5-31-2023

DB 5-31-2023
In regards to Public Participation, the following residents spoke:

1. Gary Andrees of 6531 Conner Road:
 - will the drainage be at the rear of the property
 - spoke with the Town of Clarence Highway Superintendent who mentioned that there may be a plan to redo the drainage along Conner Road. Does the applicant understand the implications of what that may entail and how it could affect their plans
 - how close to the road will the houses be built
 - will there be a private driveway entering at one point or will there be 3 separate driveways
 - hopes that Severyn Development understands the condition of Conner Road
2. Ben Oliveri owns neighboring property:
 - concerns with water being dumped on to his property and where the water will go

Mr. Geasling clarified with Mr. Oliveri that he was referring to the 20 ft. drainage easement identified on the plan. This easement is for the Town of Clarence, they are requesting the drainage easement for potential mitigation in the future, there are no current plans for the proposed easement.

Public Participation was closed for this item.

Mr. Severyn returned to address the concerns, explaining that there have not been any discussions with the Town of Clarence regarding drainage. As part of the building permit process, they will be required to provide a drainage plan for each property. At this point in the process, that has not been necessary.

Mr. Severyn noted that he expects the setbacks to coincide with the existing setbacks on the street.

Mr. Severyn added that there will be three separate driveways for each of the three separate parcels.

Chairman Sackett explained that Conner Road is a County road, so concerns regarding the road and drainage are County matters.

ACTION:

Motion by Jason Geasling, seconded by Wendy Salvati that pursuant to Article 8 of the Environmental Conservation Law, to **accept** the Part 1 Short Environmental Assessment Form as submitted and **approve** the Part 2 & 3 Short Environmental Assessment Form as prepared and to **issue a Negative Declaration** on the proposed Severyn Development Minor Subdivision at 6591 Conner Road. This Unlisted Action involves a lot split to create two (2) additional lots in the Agricultural-Rural Residential zone. After thorough review of the submitted plans and Environmental Assessment Forms it is determined that the proposed action will not have a significant negative impact on the environment.

Jason Lahti
Wendy Salvati

Aye
Aye

Patrick Johnson
Robert Sackett

Aye
Aye

Jason Geasling Aye

MOTION CARRIED

DB 5-31-2023
Motion by Jason Geasling, seconded by Jason Lahti to approve the Severyn Development Minor Subdivision at 6591 Conner Road as per the submitted survey dated January 3rd, 2023, subject to the following conditions:

1. Subject to Erie County Department of Public Works approval for access to Conner Road.
2. Review and approval by the Erie County Health Department for any future on-site sanitary facilities for the newly created lots.
3. Review and approval by the Town Building and Engineering Departments for any future construction on the newly created lots.
4. Creation of a 20' wide public drainage easement offset along the eastern property line as shown in the memo sketch from the Engineering Department, dated May 19th, 2023. Said easement shall be provided to the Town Attorney's office for review and approval, and once approved to be recorded in the Erie County Clerk's office with a filed copy to be provided to the Town Attorney. Applicant shall provide a stamped "Filed" copy to the Town Attorney's office after recording.
5. Should any additional drainage easements be required by the Town to address on-site drainage issues on the property, appropriate easements shall be submitted by the applicant and approved by the Town Engineering, Highway and Legal Departments. If required, applicant shall file same in the Erie County Clerk's office and provide a stamped "Filed" copy to the Town Attorney's office after recording.
6. Subject to Open Space, Recreation, and any other applicable fees as required by Town Code.

The applicant has heard, understands, and agrees to the conditions.

Jason Lahti Aye
Wendy Salvati Aye

Patrick Johnson Aye
Robert Sackett Aye

Jason Geasling Aye

MOTION CARRIED

Appeal No. 2

Katherine H. Connelly
Agricultural Rural Residential

Town Code Reference:
§229-44(D)

DISCUSSION:

Applicant requests a variance to allow an accessory structure (pole barn) to remain on a lot that currently does not contain a principal structure located at 6591 Conner Road.

Katherine H. Connelly and her attorney Donna Marie Hartnett were present to represent the request.

Ms. Hartnett explained that Mrs. Connelly owns approximately 15 acres of property that has a house and a barn sitting on it. The property was purchased in 2 separate parcels; one with the house, and the other was the 10-acre parcel next door. They then had the parcels combined for tax purposes and one tax bill.

After the death of her husband, Mrs. Connelly would like to sell off the 10-acre parcel and maintain the home. Basically, splitting the parcel back to its original status. After contacting the Planning Office, Ms. Hartnett was advised that a variance would be necessary. The barn located on the 10-acre parcel would be against code as an accessory structure without a principal structure.

Ms. Hartnett explained that the 10-acre parcel is under contract to be sold, subject to approval. The buyers of the parcel have plans to do a minor subdivision and construct 4 single-family homes on the 10-acre parcel.

Mr. Skaine asked how far south the accessory structure is from the current property line.

Ms. Hartnett responded that the survey shows it is approximately 10.5 ft.

Mr. Skaine asked what the size of the structure is.

Ms. Hartnett responded that it is approximately 30x40 ft.

Mr. Skaine asked what the reason is for not keeping the accessory structure with the house and splitting off the other 9+ acres.

Ms. Hartnett responded that they had considered that, but the buyer requested the accessory structure as part of the sale.

Ms. Hartnett stated that the road frontage for the 10-acre parcel is 550 ft.

Discussion continued; Ms. Hartnett noted that the only other option is demolish a perfectly good barn.

Mr. Krey asked if the request can be approved with the condition that they must build a home on the lot with the barn.

Mr. Bengart explained that they cannot do that, because it runs with the land and the property is being sold off, and we won't be able to keep control over it.

Discussion continued regarding the enforcement of this potential condition.

Phil Severyn with Severyn Development, a representative for the potential buyer was present. Mr. Severyn noted that they are working with the purchaser of this property and explained that they are considering 3 lots with a minimum of 150'. There is no consideration for 4 lots.

Mr. Skaine noted that the existing pole barn would stay on the lot.

Mr. Severyn stated that the proposal for the property was for 10 acres, and changing that would change the dynamics of the sale.

Mr. McNamara asked if the pole barn was there when the house was built.

Ms. Harnett responded that they built their house in 1989. In 1992 they purchased the adjacent 10 acres, joined the properties, and then built the barn.

Discussion continued.

Chairman Mills noted that he is troubled with having an accessory structure on its own for an undetermined amount of time.

Mr. Drinkard asked Mr. Severyn if he intends to purchase the whole property with the barn.

Mr. Severyn explained that it is not him purchasing it, but their client. It is their intention to then help him to divide it and build him a home.

Mr. Drinkard asked if the first house that the owner develops will be the lot under question that has the barn on it.

Mr. Severyn responded that it is not currently the plan, but it can be if it is a requirement.

Mr. Drinkard stated that there could be a split of the 10 acres with the non-conforming building on one of the lots after the split. It may not be the first lot to be built on.

The location of the existing pole barn was the topic of continued discussion.

Mr. Drinkard asked Mr. Severyn if he has an approximate value of the pole barn.

Ms. Hartnett responded that it is a 30' x 40' stainless steel pole barn, half is cement and half was used for horse stalls. It is in excellent shape.

Mr. Bengart asked Ms. Hartnett if there is a contract in place, and if the contract is subject to the approval of this variance.

Ms. Hartnett responded yes, and that it was originally subject to receiving approval for the split, and is now subject to the approval of this variance.

Mr. Bengart asked if the contract contemplates anything aside from getting the barn, and allowing it to stay in place.

Ms. Hartnett explained that the contract did not mention the barn. They were unaware prior to seeing the survey exactly where the barn was located in relation to the property.

Mr. Bengart asked Mr. Severyn if he is in a position to state that the buyer will agree to take down the pole barn after the sale closes, at their own expense.

ZBA 4-11-2023

Mr. Severyn stated that he is not able to speak to that extent on the buyer's behalf or commit to any conditions.

Mr. Bengart explained that the hardships are self-created, therefore using the components to receive a variance would not qualify.

If this item is tabled, Chairman Mills advised that the purchaser or an agent of the purchaser should consider being present at the next meeting to answer any potential questions pertaining to the sale of the property.

Chairman Mills asked that Ms. Hartnett explore the benefit of keeping the pole barn with the property as it is.

Mr. Bengart asked if Mr. Severyn has been hired to handle the split and the building of the three proposed homes.

Mr. Severyn responded yes.

The applicant has requested the item to be tabled so that she can explore alternative options that would keep the accessory structure with the house.

ACTION:

Motion by Raymond Skaine, seconded by Ryan Mills to **table** Appeal No. 2.

ON THE QUESTION:

Neighbor notifications are on file.

In regards to Public Participation, no one spoke.

Gerald Drinkard	Aye	Raymond Skaine	Aye	Ryan Mills	Aye
Patrick Krey	Aye	Richard McNamara	Aye		

MOTION CARRIED

ZBA 4-11-2023

Action:	By:	On:	Fee:	Paid:
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note the parcel lines displayed are approximate

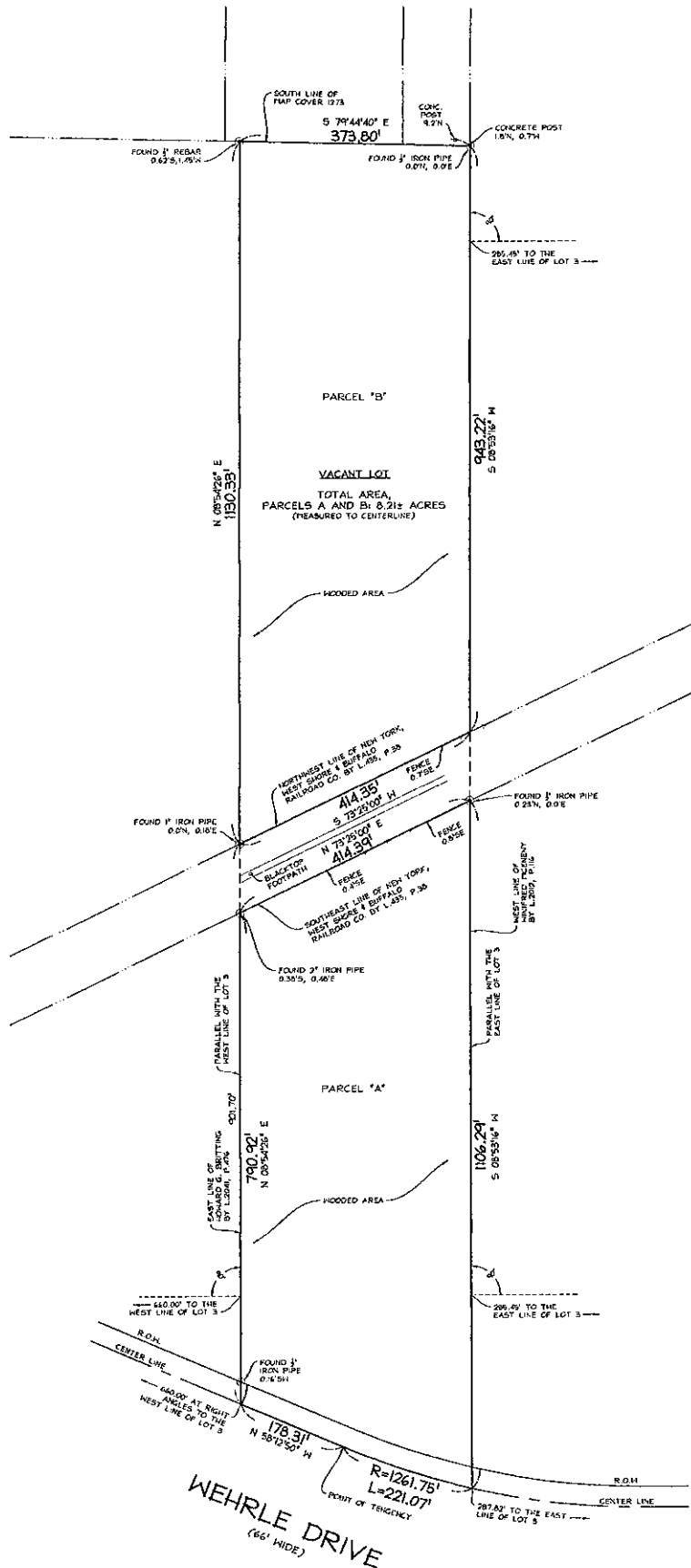
9300 Wehrle Drive



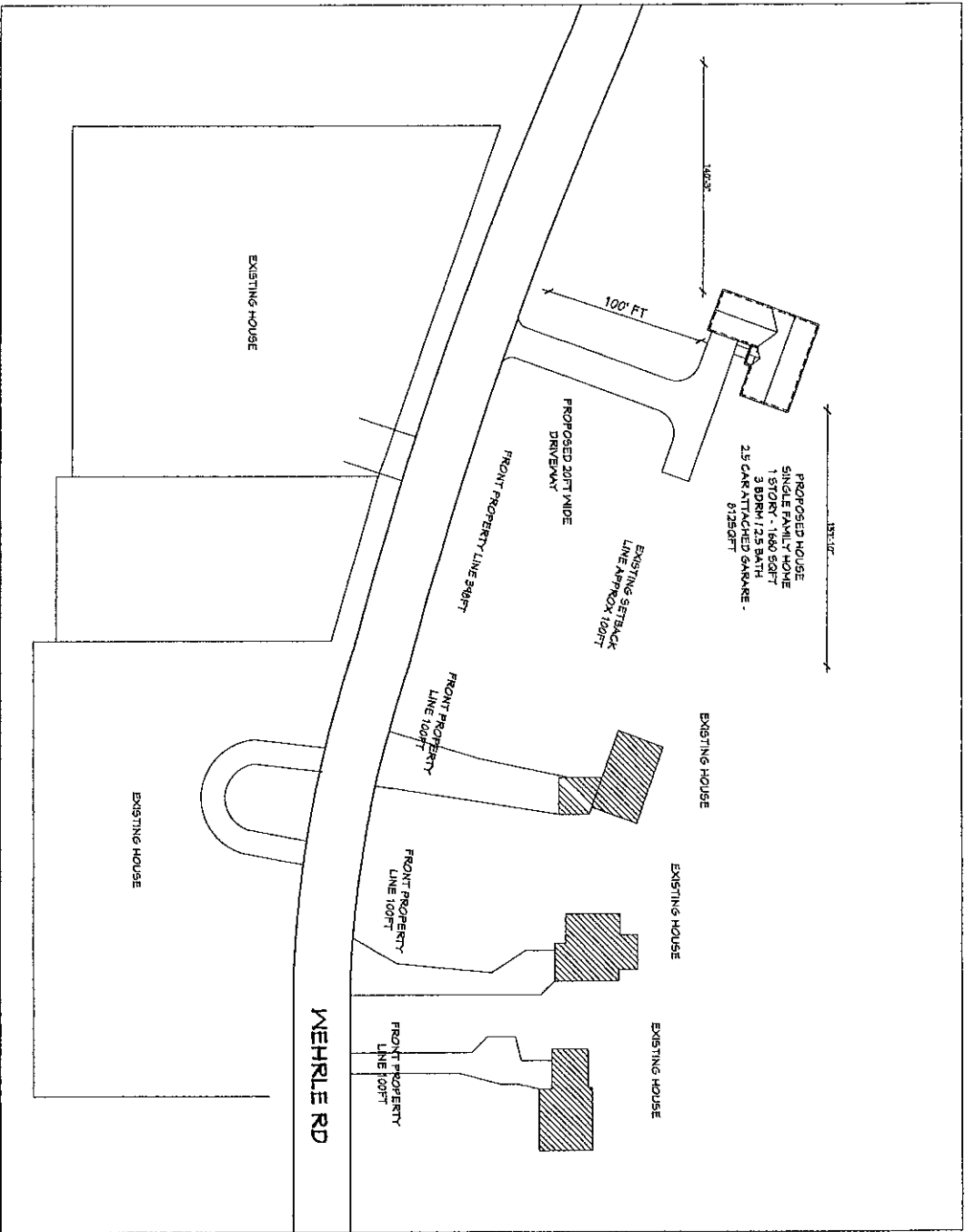
Proposed residential single-family home.

Residential homes are not an enumerated allowable use in the Industrial
Business Park zone.

Paid:



THIS SURVEY IS NOT VALID WITH AN AFFIDAVIT OF NO CHANGE		NO MONUMENTS SET OR FOUND AT PROPERTY CORNERS UNLESS NOTED HEREOF.	
3558 Lake Shore Road, Suite 500, Buffalo, NY 14219 p (716) 827-8000 f (716) 270-6091 www.nussbaumer.com		This survey was prepared to the best of our ability and skill in accordance with the standards and practices of the profession of land surveying as set forth in the laws and regulations of the State of New York. It is not to be used for any other purpose without the written consent of the surveyor.	
		BOUNDARY SURVEY 9300 Wehrle Drive Part of Lot 3, Section 9, Township 12, Range 6 Holland Land Company's Survey Town of Clarence County of Erie, State of New York	
		Date of Survey: 12/05/2025 Scale: 1" = 125' Project No.: 2532-1919	



1 PROPOSED SITE PLAN WITH SETBACKS
SCALE: 1/8" = 1'-0"

DRAWING REVISIONS		
REV	DATE	DESCRIPTION

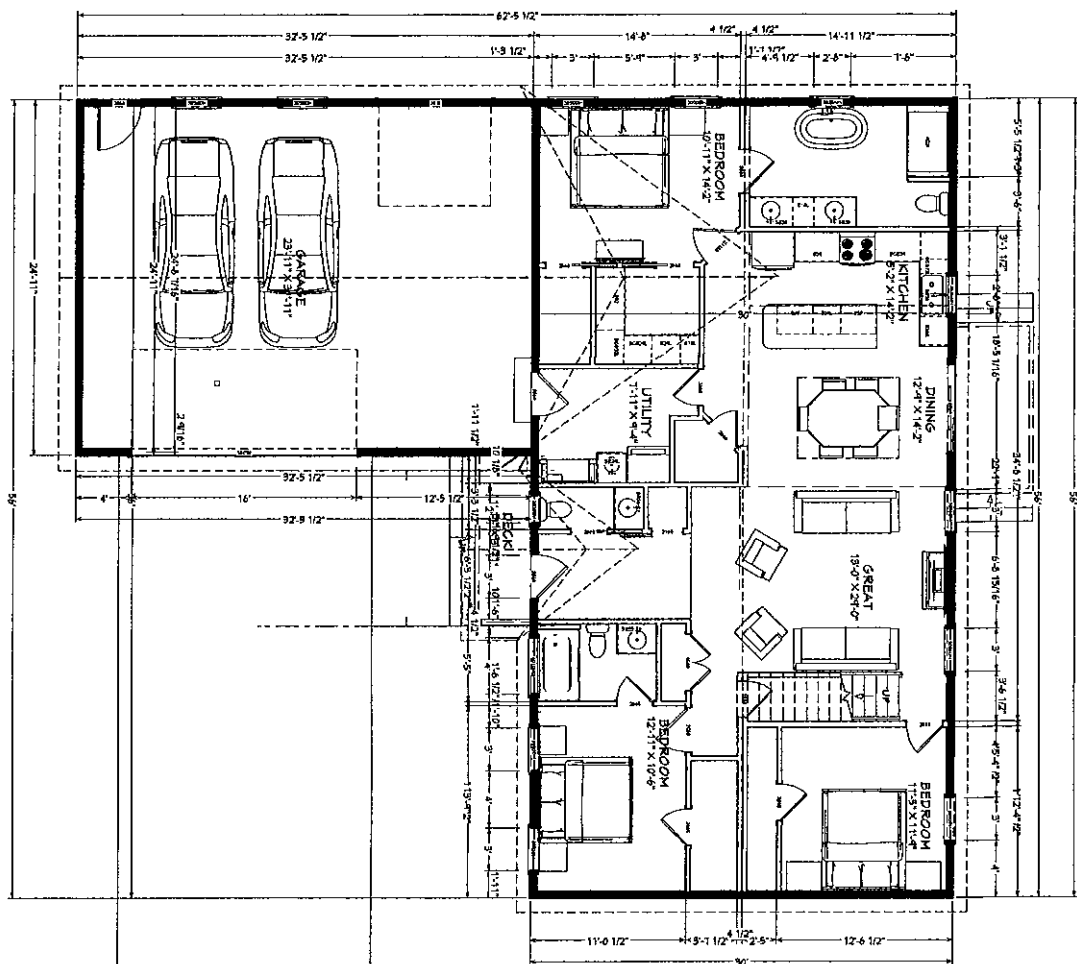
PROJECT NAME
BUFFALO MODULAR HOMES
RUSS RESIDENCE
9300 WEHRLE DR #19, CLARENCE, NY 14031

DRAWING
PROPOSED SITE PLAN

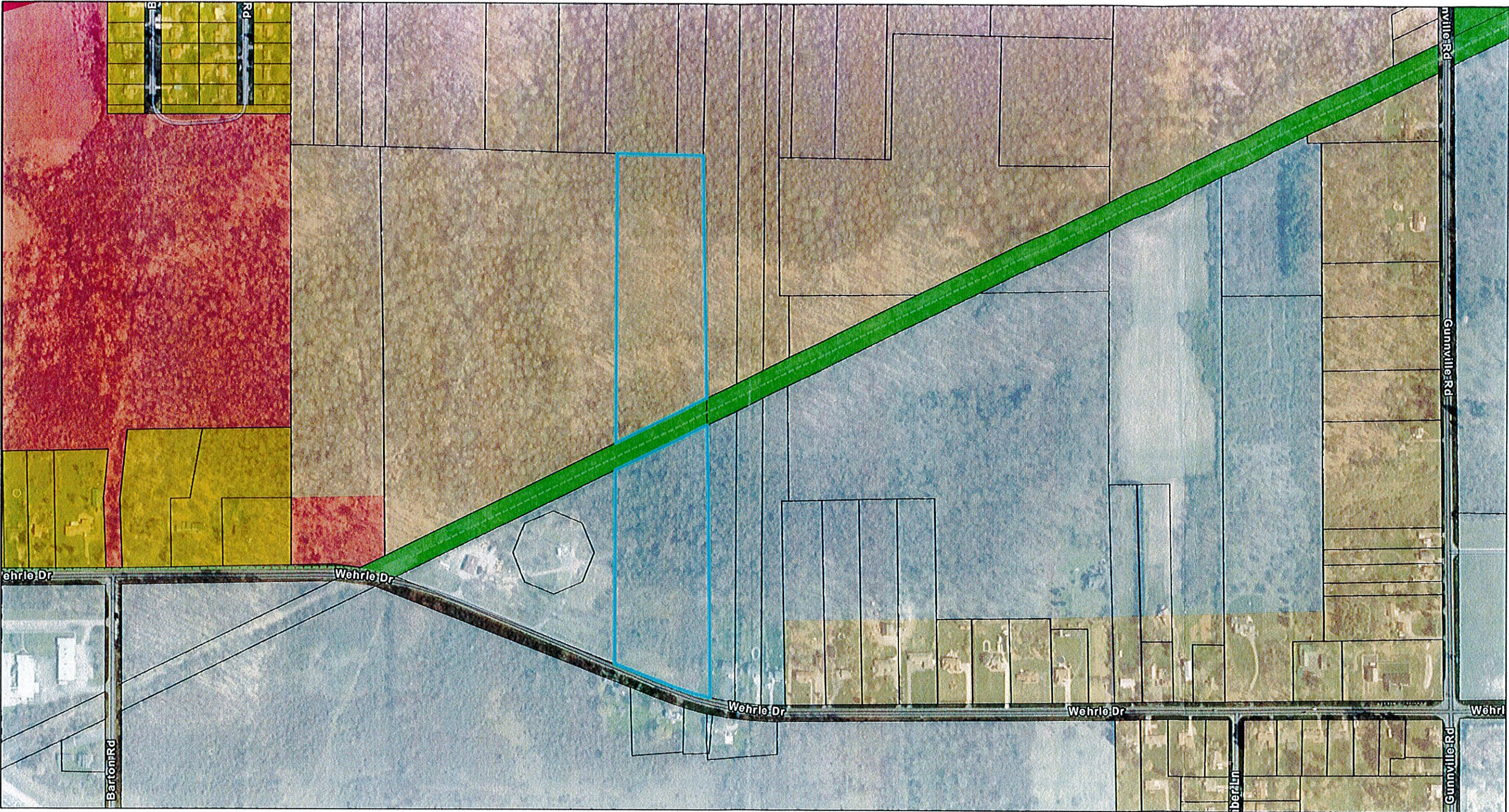
BUFFALO MODULAR HOMES
1000 W. MAIN ST. SUITE 100
CLARENCE, NY 14031
TEL: 716.755.1111
WWW.BUFFALOMODULARHOMES.COM

WARNING: This drawing is a warning of the proposed site plan. It is not a final plan. It is subject to change without notice.	REVISIONS
DESIGNED BY: JDS	DATE: DEC. 2012
CHECKED BY: JDS	DATE: NOV. 2012
DRAWN BY: JDS	DATE: NOV. 2012
PROJECT NO.: 2012-001	DATE: NOV. 2012

SI



Town of Clarence



1/27/2026, 3:39:23 PM

- Recreational Trails

Parcels

Zoning

Residential Single-Family
- Agricultural Rural Residential

Community Facility

Restricted Business

Commercial
- Industrial Business Park

Town Boundary

World Imagery

Low Resolution 15m Imagery

- High Resolution 60cm Imagery
- High Resolution 30cm Imagery
- Citations
- 1.2m Resolution Metadata

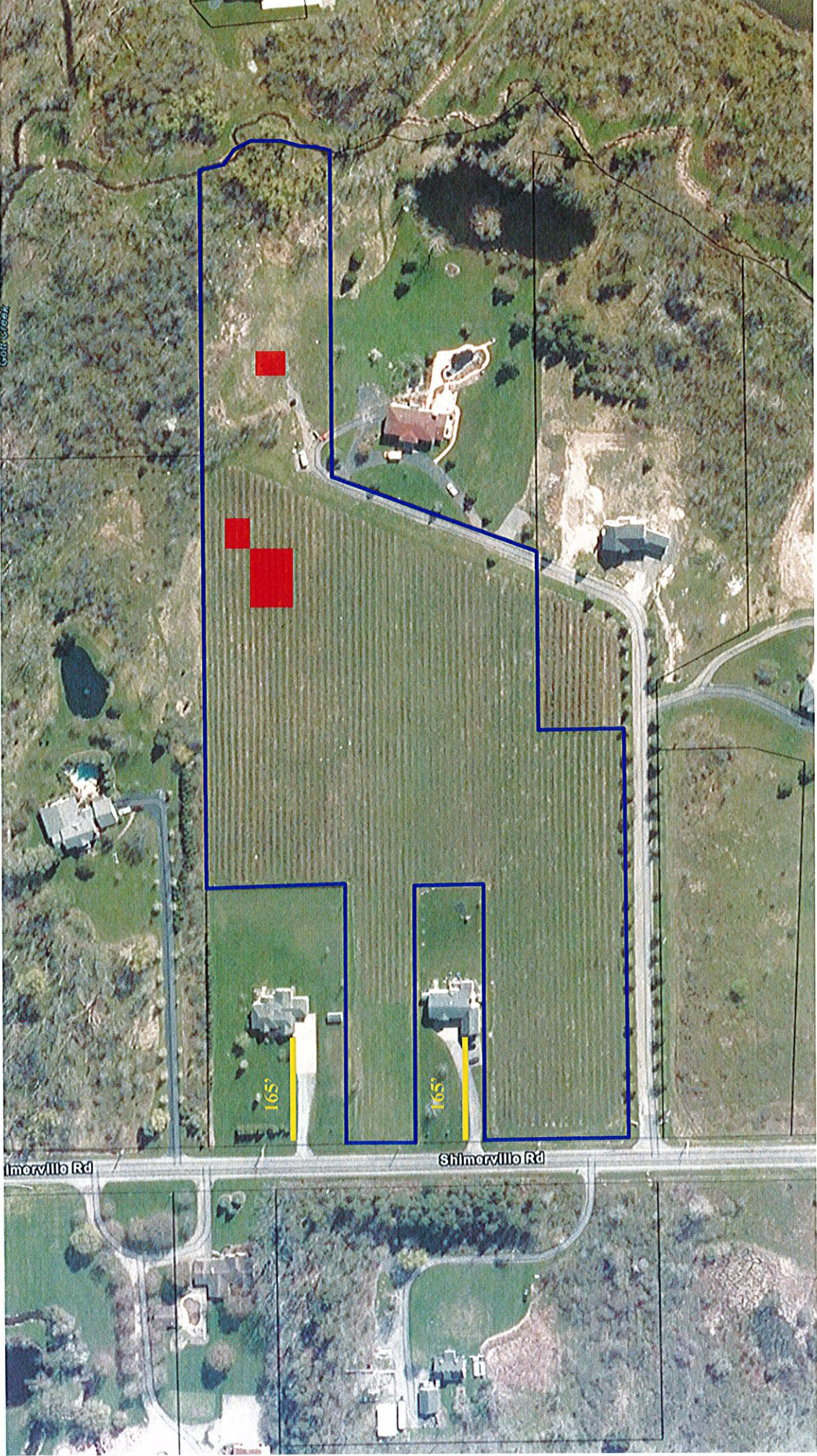
1:6,224

00.050.10.2 mi

00.070.150.3 km

Vanlor, Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community

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note the parcel lines displayed are approximate

5695 Shimerville Road



Proposed 753' principal structure front yard setback fronting Shimerville Road.

The established front yard setback along Shimerville Road within 500' is 165'.

[illegible]

EXHIBIT 1

EXHIBIT 1

DEC Holdings Inc. is seeking an area variance to allow for a front yard setback for a new home to be located at 5695 Shimerville Road. A copy of the Site Plan showing the location of the new home and the Floor Plan are provided at Exhibit "2". An Aerial Photograph showing the location of the proposed single-family home is provided at Exhibit "3". Color renderings of the proposed single-family home are provided at Exhibit "4". The proposed home requires an area variance pursuant to Section 252-52A(3) of the Zoning Code based on the determination that the established front yard setback is 165 ft. A copy of Section 252-52A(3) of the Zoning Code is provided at Exhibit "5".

The Zoning Board of Appeals previously granted the requested area variance on February 8, 2022 subject to conditions as follows:

1. Maximum subdivision of two lots, and only for immediate family members; and
2. Along the west area of the property, approximately 50 ft. off of the house line, pine trees to be staggered on a berm with appropriate water controlled engineering. The pine trees are to be at least 6 ft. high, and staggered approximately 15 ft. apart. Subject to referral to the Landscape Committee who may deviate from these suggestions, but should attempt to substantially comply with the same suggestions.

The is requesting that the two conditions listed above not be included in the request for the Zoning Board of Appeals to grant the same area variance that was granted on February 8, 2022. Copies of the minutes of the meetings of the Zoning Board of Appeals held in connection with its previous review and granting of the requested area variance are provided at Exhibit "6".

In deciding whether to grant the requested variance, the Zoning Board of Appeals is required to apply the balancing test and the five criteria contained in NYS Town Law Section 267-b(3)(b).

III. Justification for Requested Area Variances:

NYS Town Law §267-b(3)(b) sets forth a statutorily mandated balancing test to be considered by a zoning board of appeals (“ZBA”) in connection with its review of a request for area variances. The statutorily mandated balancing test requires a zoning board of appeals to balance the benefits that will be realized against the resulting detriments to the health, safety and welfare of the community.

The granting of the requested area variance will result in substantial benefits to the since it will allow the to proceed with the previously approved single-family home on the project site. No undesirable change would be produced in the character of the neighborhood. The neighborhood surrounding the property is a mix of residential and agricultural uses. The neighborhood is not laid out in any geometric pattern nor is there a consistent distance between Shimerville Road and existing homes.



Only two close neighbors to Applicant's property have homes that are the same distance from Shimerville Road (5745 and 5715 Shimerville Road). To the north of those two houses is a residence that is over twice the distance from Shimerville Road as those two structures (5755 Shimerville Road). Just south of Applicant's property is an extended private road which provides access to two current residential structures which are each located a considerable distance from Shimerville Road (5645 and 5685 Shimerville Road). These five existing homes nearest to Applicant's property are not laid out in any pattern. The construction of a residential structure on Applicant's property with the requested variance would not appear out of place or have any negative aesthetic impact on the neighborhood.

No detriments to nearby properties will be created. Each of those five existing nearby structures is within the sightline of each other. While Applicant's proposed structure would add an additional structure to those sightlines, it will not change the view from one that was pure undeveloped greenspace. There are no landmarks that would be obstructed by Applicant's structure. Applicant's proposed location would in fact create a greater separation between Applicant's residence and the existing residences closest to Shimerville Road and would maintain the low-density character currently existing along that stretch of Shimerville Road. The proposed home would not have any direct impact on neighboring properties other than being visible in the distance.

In applying the statutorily mandated balancing test set forth above, NYS Town Law §267-

b(3)(b) requires a ZBA to consider five criteria as described below:

1. **Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the requested area variances?**

The granting of the requested area variances by the ZBA will not create an undesirable change in the character of the neighborhood or a detriment to nearby properties.

2. **Whether the benefit sought by the can be achieved by some other method, feasible for the to pursue, other than an area variance?**

It would not be possible for the to receive the benefits it will receive if the requested area variance are granted without seeking relief from the Zoning Board of Appeals. No feasible alternatives are available. If Applicant is only permitted to construct a residence within 165 feet of Shimerville Road, that construction would necessarily require destruction of some of the most visible sections of the blueberry field. The home must be constructed farther from Shimerville Road to preserve those sections of the blueberry field. Applicant cannot achieve its stated goal of protecting the public's view of the blueberry fields without an area variance.

3. **Whether the requested area variance is substantial?**

The reason the magnitude of the variance is relevant is that, generally, the larger the difference the more likely it is that a negative effect would be generated. See Matter of Human Development Services of Port Chester v. Zoning Board of Appeals of the Village of Port Chester, 110 A.D.2d 135, aff'd, 67 N.Y.2d 702. However, in any particular case, the facts may demonstrate that while a variance may seem noteworthy on paper, no negative effect would be produced and, accordingly, the sought after variance should be granted.

For example, in Matter of Frank v. Scheyer, 227 A.D.2d 558, 642 N.Y.S.2d 956 (2d Dept. 1996), the parcel was 19,983 square feet. However, the zoning code required a minimum lot size

of one acre or 43,560 square feet. The variance at issue was more than 54%. Nevertheless, based on the facts presented, no harm would result to the community and the Court directed the zoning board of appeals to grant the application. The Court took similar action in Matter of Shaughnessy v. Roth, 204 A.D.2d 333, 611 N.Y.S.2d 281 (2d Dept. 1994), in which the premises contained 50 feet of frontage and 5,000 square feet of area. The zoning code required 80 feet of frontage and a minimum lot size of 10,000 square feet. Accordingly, the application concerned a 50% reduction in lot area coupled with a second area variance seeking a 62.5% reduction from the required frontage. Nevertheless, based on the facts in the record, the Court directed the respondents to issue the variances. Additionally, in Matter of Sasso v. Osgood, 86 N.Y.2d 374 (1995), the sought area variances for a 60% reduction in lot area and a 50% reduction in lot width. Based on all of the facts presented, the Court of Appeals, the State's highest court, overturned the holding of the appellate court and directed that the requested area variances be granted.

Merely because requested area variance may seem noteworthy on paper does not mean that any "harm" would be generated on the surrounding community, and it is "harm" that is balanced against the interest of the according to the Town Law §267-b(3) test. As mentioned previously, the granting of the requested area variance in furtherance of the proposed single-family home will not result in any "harm" on the surrounding community.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood.

The proposed variance would have no adverse effect or impact on environmental conditions in the neighborhood.

5. Whether the alleged difficulty was self-created?

Town Law Section 267-b(3)(b) expressly states that the issue of whether an alleged difficulty is self-created cannot be utilized as the sole criteria in determining whether to grant a

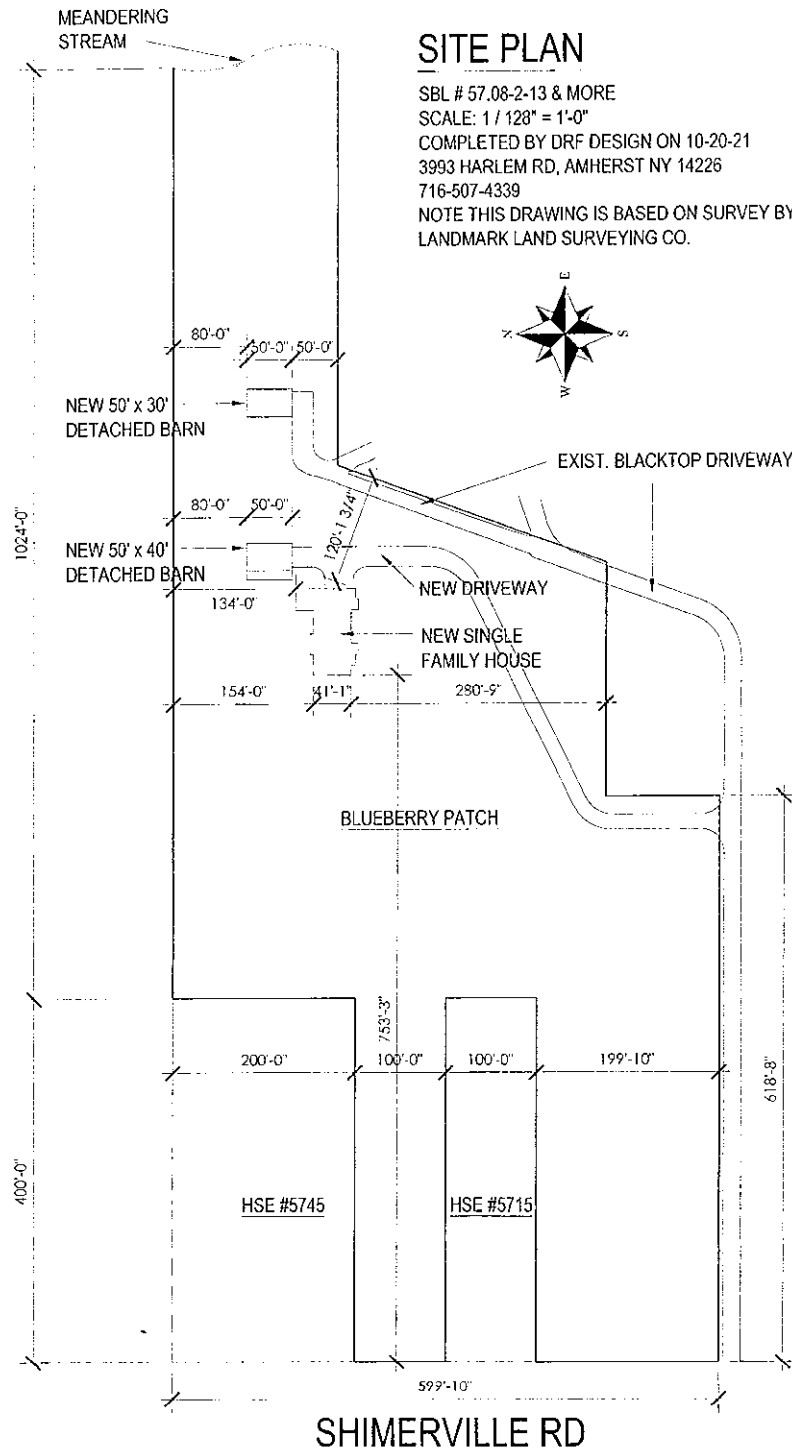
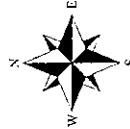
requested area variance. It is the position of the that the alleged difficulty can be viewed as being self-created since the has knowledge of the existing setback requirement. However, the overall balancing test and the other four statutory criteria provides ample justification for the granting of the requested area variance.

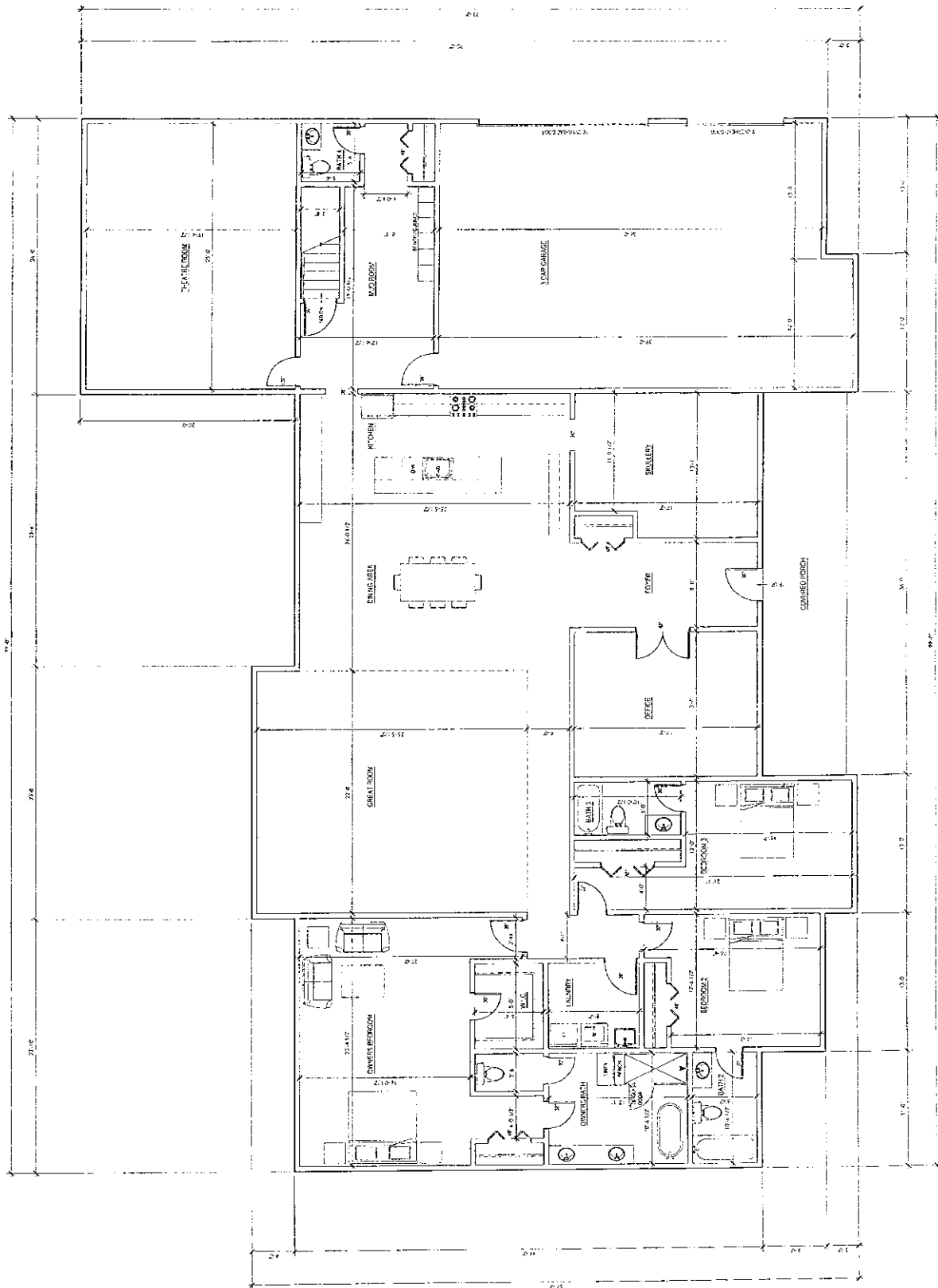
Conclusion:

The Applicant requests that the Zoning Board of Appeals grant the relief being sought in connection with the proposed single-family home project. The granting of the requested area variance is justified since the benefits that will be received by the if the requested area variance are granted clearly outweighs any resulting detriments per the statutorily mandated balancing test and five criteria.

EXHIBIT 2

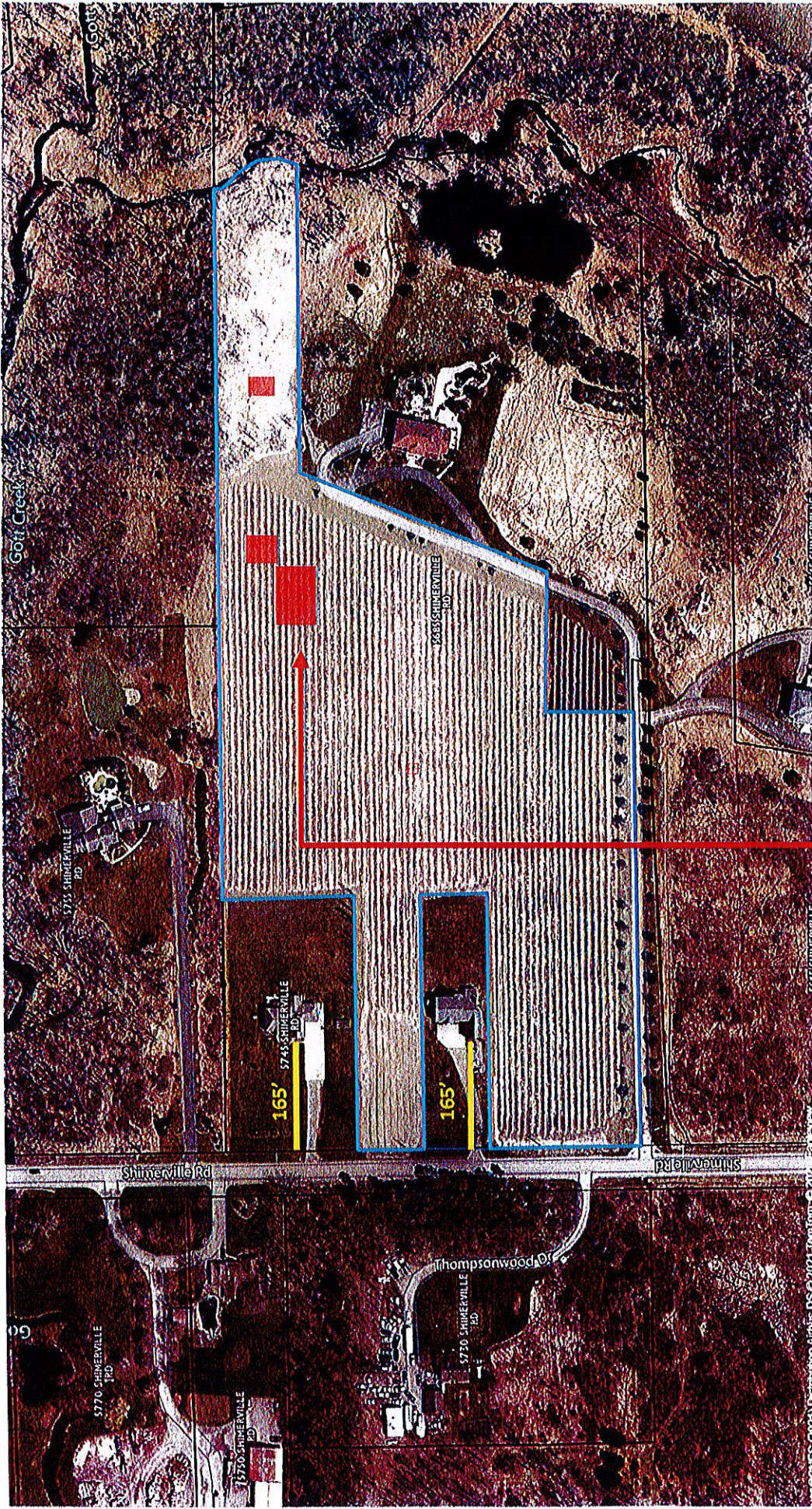
SBL # 57.08-2-13 & MORE
SCALE: 1/128" = 1'-0"
COMPLETED BY DRF DESIGN ON 10-20-21
3993 HARLEM RD, AMHERST NY 14226
716-507-4339
NOTE THIS DRAWING IS BASED ON SURVEY BY
LANDMARK LAND SURVEYING CO.





ARCHITECTURE
SCALE 1/4" = 1'-0"
FLOOR AREA 55'

EXHIBIT 3



*note the parcel lines displayed are approximate

5695 Shimerville Road

Proposed single family home with 753' front yard setback from Shimerville Road

Average established front yard setback of frontage lots on the same side of the road is

~165'

588' variance requested

EXHIBIT 4



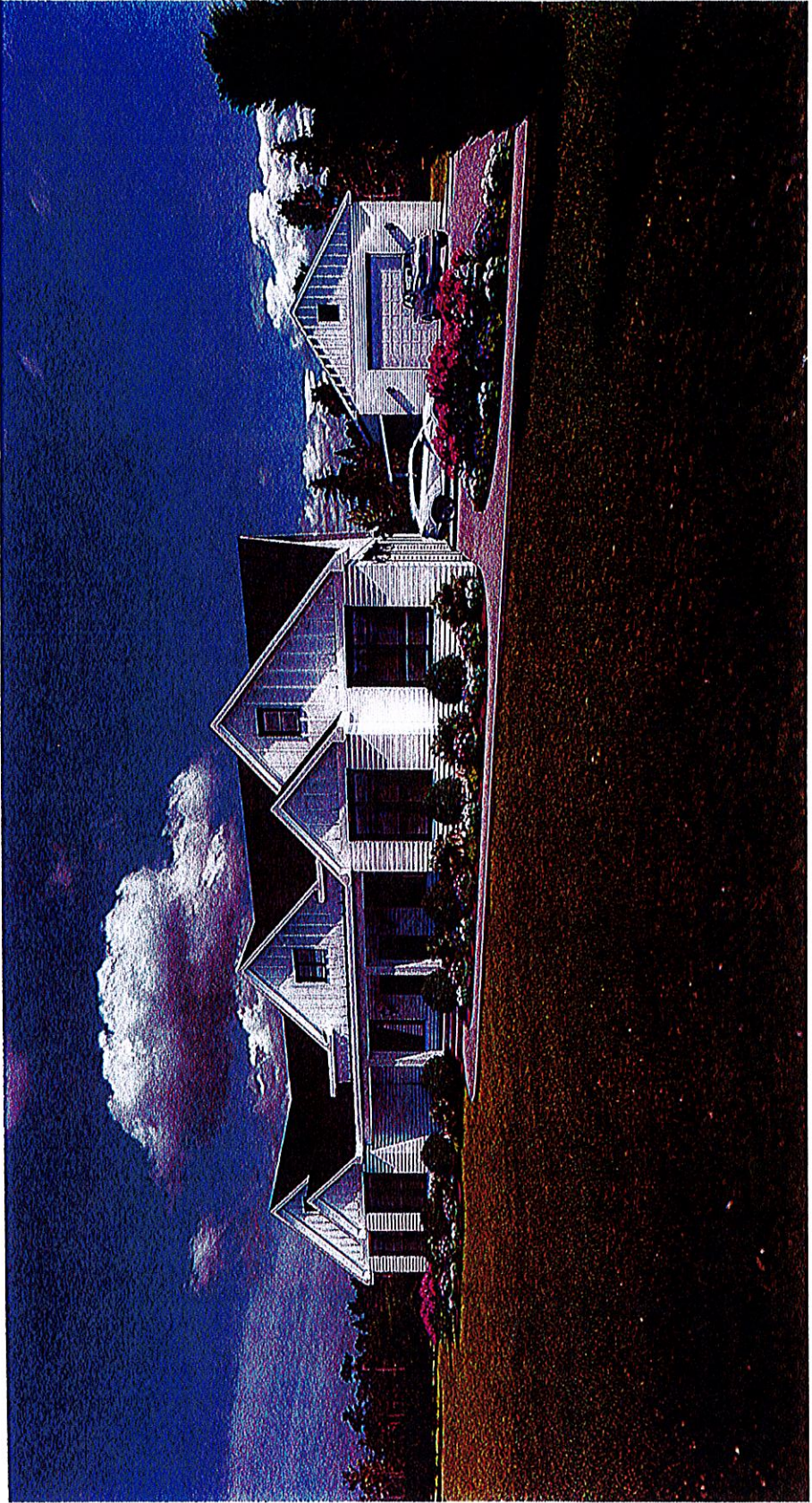






EXHIBIT 5

§ 229-52. Setbacks.

A. Front yard:

- (1) On lots with an established building setback line shown on a filed subdivision plat, no building or accessory building shall extend closer to a street or highway right-of-way than said established building setback line, nor shall any dwelling be erected or otherwise located so that the front building line lies more than 10 feet from the established building setback line.
- (2) On lots in undeveloped areas not shown on a filed subdivision plat, no building or accessory building shall extend closer to the street or highway right-of-way than 45 feet, nor shall any dwelling be erected or otherwise located so that the front building line lies more than 100 feet from the street or highway right-of-way.
- (3) On lots in developed areas not shown on a filed subdivision plat, no building or accessory building shall extend closer to a street or right-of-way than a building line established by the Zoning Code Enforcement Officer after review and examination of the existing structures within 500 feet of the proposed building. Said line shall in no case be closer than 35 feet from the street or highway right-of-way. No building in any such developed area shall be erected or otherwise located with its front building line more than 10 feet behind the building line so established by the Zoning Code Enforcement Officer. The determination of the Zoning Code Enforcement Officer establishing a building line may, upon proper application, be subjected to review and modification by the Zoning Board of Appeals (see Article XVI, Administration).
- (4) The standard minimum setbacks shall be as follows:
 - (a) Front: 45 to 100 feet.
 - (b) Side: 12.5 feet. **[Amended 2-14-2007 by L.L. No. 1-2007]**
 - (c) Rear: 45 feet.

B. Side yard: Side yards which abut a public or private street shall have the same minimum setback as the front yard setback. Minimum side yards for side load garages shall extend no closer than 28 feet to the side lot line. There shall be a minimum of a three-foot setback requirement from any lot line along a driveway for required drainage. No principal building, exclusive of eaves or cornices, shall extend closer than 12.5 feet to either side lot line.

C. Rear yard: No principal building shall extend closer than 45 feet to the rear lot line, except that, on a lot extending through from street to street or highway to highway, the front yard requirements on each street or highway shall be observed.

EXHIBIT 6

Appeal No. 5

Davmicor, Inc.
Residential Single-Family

Applicant requests a variance of 588' to allow a 753' front yard setback for the construction of a single family home;
Located at 5695 Shimerville Road

Town Code Reference;
1) §229-52 (A)

Note: This request for this property supersedes the September 2021 variance request, which was tabled.

DISCUSSION:

Frank Dec, President of Davmicor, Inc. was present to explain the request, stating that the 588' variance request is off of two homes which currently exist on Shimerville Road, and the property in question is known as the "Blueberry Farm".

In 2018 there was an Open Development concept plan submitted, and at that time it was designated as a residential lot for a home to be built. At the time, it was void because the lot was only submitted with the plan because the acreage that was involved in the overall 34 acre development.

Mr. Dec referred to page 2 of the Planning Board minutes from the May 16, 2018 Planning Board meeting, states that the only reason the house is shown on the plan on that lot is because it is a building lot that someone could potentially build on in the future, it was not intended at that time for the house to actually be there, it was put on as part of the plan.

Also at that time, when the entire acreage was purchased, it was with the intent that the owner at that time was going to maintain the blueberry farm, and continue farming it. The blueberries are overgrown, and there is not currently a single blueberry growing within the 8.5 acres due to the amount of vegetation, overgrowth, and disrepair that the land is in. Mr. Dec stated that it is his intention to possibly rehabilitate the blueberry farm, and to revitalize the blueberry bushes that are there, and bring them in line with the Green Print program that Clarence is part of.

Mr. Dec stated that the Town is losing a lot of farm and farmland, they would actually like to revitalize and rehabilitate something. They would like to put a house on the back of the property, is because they would like to maintain the view of the blueberry fields from Shimerville Road for the public to enjoy. Directly across from Shimerville Road is a Co-op, which is part of the Green Print program, forever wild and forever green. They would like to maintain that similar aesthetic view for the public, from Shimerville Road.

Basically what they are hoping for on this property is a house, a barn, and a garage structure. Mr. Dec referred to the handouts which were included in the project file, noting that one of the barns is set further back on the property, while one is located closer to the house. If they plan to operate the property as a farm moving forward, a barn will be necessary for equipment and storage.

Mr. Mills read two letters on to record that were received in the Planning Office, both in opposition of the variance request. These letters will be placed in the project file, labeled Exhibit A and Exhibit B.

Mr. Dec responded, stating that he has not spoken with any member of the board, nor does he believe he is friends with any member of the Zoning Board, and that Mr. Bleuer is the only person that he has spoken to since he purchased the property that works for the Town of Clarence.

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Mr. Dec stated that they are proposing a single-story home, not a multi-level home. He also indicated that in 2018, the previous owner indicated that he intended to revitalize the property, but he did not. Mr. Dec noted that they have begun to revitalize the bushes, and rehabilitate the blueberry farm.

Mr. Krey clarified with Mr. Dec that his intentions are to build a single family house for the sole purpose of maintaining the blueberry farm. Mr. Dec responded that he wants to live there, and that the purpose is to build a house for himself. Mr. Krey asked if he plans to live in the proposed house and maintain the blueberry farm, Mr. Dec responded yes. They have been researching the blueberry farm, including having the Cornell Extension out to help them develop a plan.

Mr. Dec stated that they are not looking to subdivide, Mr. Krey asked about the company which is named on the application, Mr. Dec replied that Davmicor, Inc. is his family holding company.

Mr. McNamara stated that on the lot line it shows that there is a driveway and an easement to access the driveway. Mr. Dec responded that there are actually two driveways, one that runs east – west from Shimerville Road, with a common easement of all property owners for the east-west common road. This road extends approximately 124 ft. north, making it just 124 ft. north-south from the east-west road. Mr. Dec owns the remainder of the road which runs north-south.

Mr. McNamara asked Mr. Dec if he's given any consideration on moving the house closer to Shimerville Road, Mr. Dec responded that one of his main priorities is to maintain the agricultural look of the property, preserving as many of the blueberry bushes as possible. Additionally, there are already houses in the back area, and when they met with the architect, this area was the most appealing to them.

Mr. McNamara asked how much greenspace and blueberries will be removed around the house, Mr. Dec responded that in order to build the house, and garage, they only need to remove approximately an acre and a half of blueberries.

Mr. McNamara asked how big of a ranch home Mr. Dec plans to build, Mr. Dec responded approximately 4500 sq. ft.

Mr. Mills asked about Mr. Dec's comments that he has potential plans to rehabilitate the blueberry farm, and asked if Mr. Dec is prepared to state to the Zoning Board that he will preserve some portion of the blueberries.

Mr. Dec stated that he can make that commitment, but the problem with that is that there is currently not a single blueberry growing on the bushes, because it has been so ill maintained for so long. They won't know until the spring whether the plants will be healthy and able to be revitalized. If none of the plants are able to be rehabilitated, he does not plan on going out and purchasing 85,000 blueberry bushes in order to keep his word that he gives tonight. Mr. Mills asked if Mr. Dec's intentions are to revitalize and rehabilitate the bushes that are there, if possible. Mr. Mills asked Mr. Dec if he would be willing to accept it as a condition that some of the blueberries stay, Mr. Dec responded that yes, if that were to be made in to a condition that some of the blueberry bushes are to stay, he would accept that.

Mr. Mills asked Mr. Dec where he plans to tie in the driveway, Mr. Dec referred to the site plan that was submitted (Exhibit C) and stated that is where they are contemplating. Mr. Dec added that if the blueberries that are there currently are healthy, but there are unhealthy blueberries in another location, then they reserve the right to move the driveway in order to preserve as many blueberries as possible.

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Mr. Mills asked if the blueberries survive, does Mr. Dec contemplate running any type of business from this parcel. Mr. Dec responded this is all part of the discussion, it depends on whether the blueberries survive, how many survive, if they have any neighbor support. Mr. Dec does not know the rights or details regarding running it as an ongoing farm, and currently it is zoned Residential.

Mr. Mills asked Mr. Dec if he'd be willing to agree to a condition of approval stating that no other structures are to be put on the property other than the two detached structures and the house. Mr. Dec responded that as long as he owns the property, yes. Mr. Mills asked Mr. Dec if he'd agree to not subdivide the property, Mr. Dec responded yes as long as he owns it, he cannot be responsible for what anyone in the future may or may not want to do with the property.

Mr. Bengart stated that there could be a deed restriction put in to place which allows the applicant to agree to the condition, and would also apply to any future owners.

Mr. Mills asked Mr. Dec if he would agree to a deed restriction, Mr. Dec responded that his only issue with that is if they do end up running the property as an ongoing farm operation. Mr. Dec stated that he is not a farmer by trade, and he is learning this as he goes along. He is concerned that eventually down the line, he may need another structure, if it becomes another fully functional blueberry farm. He may need another structure for the public to come to visit, or other possible reasons that may arise from running a functional farm.

Mr. Mills asked Mr. Dec about any other future residential homes on this parcel, Mr. Dec stated that he does not know if he wants to commit to accepting that as a potential condition.

Mr. Michnik confirmed with Mr. Bengart and Mr. Bleuer, that if the board makes a decision on this, and any conditions they decide to attach, stays with the property despite the ownership, it stays with the property itself. Mr. Bengart stated that subject to Mr. Dec or someone else requesting another variance, until that decision, then yes that is correct.

Mr. Michnik asked Mr. Bleuer if it is correct that once the Zoning Board makes a decision, it remains with the property. Mr. Bengart responded that it is correct, until if at a time, another variance is requested and that board decides to change it.

Mr. Bleuer clarified further by stating that the variance would need to be enacted, meaning there would need to be construction on it before expiration, and also as Mr. Bengart stated, that an applicant in the future could request relief from previously imposed conditions.

Mr. Dec stated that he has children, and is trying to think of everyone and any future possibilities. He asked if they decided to run it as an operational farm, would the board be receptive to the condition that they would not erect another residential structure on the land unless it was for a family member.

Mr. Michnik asked Mr. Dec if he currently owns all of the property, Mr. Dec responded yes it is all finalized, and is hoping to start the projects as soon as possible.

Mr. Dec stated that the barn in the back, on the east side of the property, would be a regular barn. All of the structures would match one another, architecturally appear as related buildings, not random structures. The barn closest to the house will resemble a barn, but is actually a garage, utilized more towards the entertaining area of their home. It will not be an industrial barn, but more personal for entertainment purposes.

Mr. Michnik asked Mr. Dec what happens if the blueberry project dies on the vine, would he still need both of the proposed buildings. Mr. Dec responded that he needs that building now, for storage of his equipment that he currently has sitting out on the property. This equipment would be used in the revitalization process of the blueberries.

Mr. Dec stated that in 2018 when this issue was in front of the board, and there was concern with the blueberry farm being destroyed, nothing has happened with the blueberries since that time, so for all intents and purposes, they have already been destroyed from lack of attention and care.

Mr. Mills asked Mr. Dec about the two letters that have been submitted regarding this project, Mr. Dec stated that to his knowledge, they are the two neighbors on Shimerville. Mr. Mills asked if any adjacent parcels are in support of this proposed project, Mr. Dec responded that all of the other ones that he has spoken with are in full support.

Mr. Bleuer stated that in addition to the Neighbor Notifications that the applicant submits, the Planning and Zoning office also mailed out notifications to each adjacent neighbor.

Neighbor Notifications are on file for:

1. Vacant land on Roll Road
2. Vacant land on Roll Road
3. 5745 Shimerville Road
4. 5715 Shimerville Road
5. 5665 Shimerville Road
6. 5685 Shimerville Road

Mr. Mills asked Mr. Dec if he is open and receptive to putting in any type of berm as a form of visual mitigation, in response to the two neighbor objections that have been received. Mr. Dec responded yes, he would be open to accepting conditions if those were included, with the understanding that they would need to remove blueberry bushes in order to put a berm or other form of buffer in.

Mr. Mills asked Mr. Dec what he would do if this variance is denied, who responded that he would most likely sell the property. If he keeps the property, he would like his house back where he is requesting within the variance, because he wants to be in the blueberries, and the ambiance of the farm. If he wanted to simply live on Shimerville, he would not move from his current neighborhood.

Mr. Dec stated that if they are able to resurrect the blueberries and the farm becomes operational once again, Mr. Dec would need to employ people to work on the farm, and there is currently no access for anyone other than the common ownership road. There would need to be some form of access to reach the property other than from Shimerville Road itself.

Mr. Dec stated that he would agree to re-planting 3 acres of blueberry bushes if it became necessary. Mr. Mills confirmed that Mr. Dec would agree to that if it were to be a deed restriction and condition of approval, Mr. Dec responded yes he would.

Mr. Krey asked what Mr. Dec would do with the remainder of the property if the blueberries don't survive and he replants the 3 acres. Mr. Dec stated that he is hopeful the blueberries will survive, he has not done any planning in any other direction aside from the blueberries. The expert from Cornell is confident that the bushes will rehabilitate, which gives Mr. Dec hope.

Mr. Mills asked Mr. Dec if he has any architectural drawings to submit, Mr. Dec responded that he has met with an architect, they have an idea of what the house will look like, but without having the variance, he did not want to spend all the money of designing a home if they weren't able to build it. Mr. Dec did

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have a photo of draft plans for what they are hoping for, which Mr. Mills stated would be beneficial for everyone to see, to give an idea of what could potentially be built.

Mr. Bengart passed Mr. Dec's phone to the board, which is where the photos were for them to view.

Mr. Bengart asked Mr. Dec if he has looked at what will be needed for hydrating, Mr. Dec replied that there is a fire hydrant on the common road on the east side. There is existing irrigation pipeline already in place from a previous owner.

Mr. Bleuer added that there is on file a memo from Joe Saletta, Code Enforcement and Fire Inspector for the Town of Clarence. Stated in that memo is that the proposed single family dwelling would be required to be within 400 ft. of the nearest private fire hydrant. That would include the rear of the structure, this would be measured by hose length, not as the crow flies.

Mr. Michnik asked if there is any proof that there is a working fire hydrant on the property. Mr. Bengart stated that this has been included in previous discussions also, and although he has not seen it, he has no reason to believe Mr. Dec is falsifying the information. Though he is not sure of the distance or where it sits.

Mr. Dec stated that while he has seen the fire hydrant, he has not seen it open. He questioned the location that Mr. Saletta specified, because he is unsure where his site plan is in respect to the fire hydrant, and questioned whether there is an option to extend and install another fire hydrant at his expense. Mr. Bleuer stated that most likely it would not be an issue, but is something that needs to be taken up with the Building Department.

In regards to Public Participation, the following spoke:

- Jim Purcell, of 5745 Shimerville Road stated that he knows this property better than anyone else, and he installed half of the blueberries back in the day. Mr. Purcell stated that this entire issue was previously discussed in 2018 when a then board member very spiritedly stated "do not come back again, we are not discussing this again, there will not be a building on this parcel". Mr. Purcell asks that the Zoning Board rejects the request, as it is not a simple setback, as it ends up sitting right behind his home. This would greatly diminish his line of vision, as well as reduce his property value.

Mr. Purcell stated that all of the discussion about blueberries is completely irrelevant to what the issue actually is, as Mr. Dec could leave the meeting tonight promising he'd continue on with the blueberries, then rip them all out tomorrow. There is no contractual obligation or enforceable, because this discussion has happened previously, to no avail. He would like to not have this discussion again, the board should stand by the decision that was made in 2018.

Mr. Purcell further explained how the previous owner ran the farm, and his reasons why he is objecting to this request.

Mr. Michnik asked Mr. Purcell what his relationship was to the previous blueberry farmer, Mr. Purcell responded that the owner had asked him for his help, and from there he helped him with every aspect of the successful business.

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Mr. Mills asked Mr. Purcell if in terms of the berms which seems like they would help from a visual standpoint, it would block the view of the proposed home, would that alleviate those concerns. Mr. Purcell stated that he has included a list of conditions, part of which has to do with the drainage. Mr. Purcell would like to see a 10 ft. berm along all property lines, his conditions which he has submitted are for the worst case scenario.

Mr. Purcell continued to express his disdain for the proposed project, as well as all of the work that the previous blueberry farm owner did and put in to the business.

The Public Participation portion of this appeal for this meeting was closed at this time.

Mr. Dec stated that he does understand Mr. Purcell's passion, as they have also fallen in love with the blueberry farm. The previous owner of the property, owned the entire property back there, all of the lots, therefore he did not have to worry about an easement or having workers coming in using a road he did not own.

Regarding the current irrigation system which is on site, is part of the easement that they have access to, therefore they have already handled the access to the water and irrigation.

As far as not needing a storage facility for the equipment, the equipment currently on site is weathered, and in need of being covered from the elements.

Mr. Dec reiterated that he wants to revitalize and maintain the property, restoring it to what it once was.

Mr. Mills asked Mr. Dec whether he'd consider situating the proposed home off to the right, where it would still be far back, but not as far as what is currently planned, and would be out of the neighbor's line of site. Mr. Dec responded that one of the issues is that they do not own the southeast corner of the property, as it was sold by the previous owner.

Mr. Dec stated that he would be willing to put up a berm on the back of Mr. Purcell's property, in between the two houses, but would not agree to put up a berm around the entire 11.7 acres of property.

Chairman Michnik stated that he is not comfortable with any of this, because they do not have any blueprints of what Mr. Dec is proposing. None for the house, or either of the accessory structures. He is not ready to move forward with this, because he does not have enough information to make an informed decision.

Mr. Mills agreed with Mr. Michnik, that they need more information including elevations for the structures, preliminary landscape drawings for the berms, draft site plans. Mr. Mills would like to have more data in order to make an informed decision.

Mr. Dec stated that because of the money that it will cost to get this information, he will cease the current efforts of rehabilitation on the bushes, as he does not want to spend money twice.

Mr. Michnik referred to Mr. Dec's statement that if this variance doesn't work out for him, that he will sell the property. He feels that either way, Mr. Dec will benefit from the property, because if he sells it, the work he has already started to put in on the blueberry bushes can be used as profit in the resale of the property.

Mr. Bengart clarified that this board is not saying either yay or nay at this point, he and Mr. Mills are requesting additional information.

Mr. Dec stated that he is happy to walk the property with anyone that is interested, to show them firsthand how minimally invasive this ranch home actually is.

Mr. Krey asked Mr. Bleuer if this lot is able to be subdivided, Mr. Bleuer responded that currently it cannot, but an application can be made to the Town to seek subdivision of it, but currently there are no approvals to subdivide.

Mr. Dec stated that he would be willing to Table the request, if he is able to get clear direction of what the board would like.

Mr. Mills requested the following information be provided to the board, should this item be tabled:

- At least one elevation of the house
- One elevation of the barn that will be used for entertaining
- One elevation for the other barn
- Floor plan for house and barn
- Landscape plan for berming – where they will go, how they will mitigate site lines. Mr. Dec asked how tall the berms would be expected to be, because currently the blueberry bushes are approximately 5-6 ft. tall.

Mr. Bengart reminded the board that the bigger the berm, the more potential for drainage issues, which Mr. McNamara also stated would be a risk to the blueberry bushes as well.

Discussion continued regarding potential berms.

Mr. Mills continued with the requests of the board, should the item be tabled:

- Affirm that a 3 acre requirement of blueberry bushes would be acceptable for a condition
- Deed restriction for future sub development or homes, and if Mr. Dec is comfortable with it being family only.

Mr. Dec requested the board to table Appeal No. 5.

Mr. Bengart stated that while the next meeting is possible, the board needs to feel comfortable with the additional information that Mr. Dec provides, in order to be put back on an agenda.

Mr. Bleuer added that any berm proposals would be subject to the Engineering Dept. review for grading and drainage.

ACTION:

Motion by Ryan Mills, seconded by Richard McNamara to **table** Appeal No. 5

Raymond Skaine	Nay	Patrick Krey	Aye	Ryan Mills	Aye
Richard McNamara	Aye	Daniel Michnik	Aye		

MOTION CARRIED

ZBA
10-12-2021

Appeal No. 2 (from the October, 2021 meeting)

Davmicor, Inc
Residential Single-Family

Applicant requests a variance of 588' to allow a 753' front yard setback for the construction of a single family home located at 5695 Shimerville Road.

Town Code Reference;
§229-52 (A)

DISCUSSION:

Frank Dec, one of the owners of the applicant Davmicor, Inc. was present, and added that based on the requests of the board at the October 12, 2021 meeting, he has submitted the following items:

1. proposed floor plan
2. rendering of the house
3. plans from the architect for the placement of the house on the property
4. examples of landscaping

The plans are for a one-story ranch home with two accessory buildings, one which will be closer to the home, and the other further back on the property.

Mr. Dec stated that they have attempted to show how they plan to maintain the blueberry bushes that won't be affected by building the house.

Mr. Skaine noted that Mr. Dec's request is only for one building, not three. Mr. Bleuer stated that the variance request is for the front yard setback of a single family home, and any accessory structures proposed would be subject to the zoning code. As long as they are at or behind the front foundation line of the house, they would be acceptable from a zoning perspective. The two accessory structures are not before the board for any variance action tonight.

Mr. Krey asked about the minimum amount of acreage of the blueberry bushes that Mr. Dec will maintain, Mr. Dec referred to the photos that he has submitted, and stated that they will remove 2 acres of blueberries for the house and water. Until everything is engineered, he does not have an exact acreage just yet, but his goal is to maintain as much as possible of what is there now.

Mr. Dec noted that at the previous meeting there were suggestions that he was going to eventually subdivide the property. His plan is that this will become an estate for him and his wife, and his family.

Mrs. Burkard referenced the neighbor who voiced his concern regarding the distance from Mr. Dec's proposed house to his neighbor's home, and asked what the actual distance is from the back of his house to Mr. Dec's house. Mr. Dec responded that it is 550 ft.

Mrs. Burkard asked Mr. Dec if he plans on building additional home for his children on this property, Mr. Dec replied that he has not given any thought to that, the idea right now is that their home will be the gathering place for everyone.

Mrs. Burkard asked if the blueberries don't rehabilitate, will Mr. Dec take them out. Mr. Dec responded that whatever they are unable to salvage will be removed. Mrs. Burkard asked if that happens, what Mr. Dec will replace the bushes with. Mr. Dec replied that he is not sure on specifics, but it would be something to continue agricultural aesthetics. Mrs. Burkard asked if he would be willing to put up tall pine trees, Mr. Dec responded that the problem with planting trees at this point, is that he would need to remove blueberries. The area is already wet, and planting trees would cause additional water to collect in that area.

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Mrs. Burkard asked if there will be landscaping along the side of the proposed house, Mr. Dec responded yes there will be. The photo of the house indicates shows landscaping around it.

Mr. Michnik asked Mr. Dec if his neighbor in front of him asked to purchase some property, would he be willing to sell it. Mr. Dec responded probably not.

In regards to Public Participation, the following spoke:

Michelle Petri, currently residing at 392 Cleveland Drive in Tonawanda, is building the home located at 5665 Shimerville Road. It is the new build between the two existing homes at the end of the private drive.

They broke ground on June 22, 2021 and since the time that the Dec's have owned the property and successfully purchased it in to their name, she has had many long conversations with them. Mrs. Petri and her husband own .5 acres of the blueberries in the northeast corner of the blueberry lot is in front of her house.

Mrs. Petri stated that many of her conversations with the Dec's have revolved around how they can work together to bring the blueberries back to life, as they have not been maintained in many years. Mrs. Petri stated that she and her husband would have liked to have more of the blueberry farm, and although they are unable to, she is happy that someone else has taken on the task of rehabilitating them, and shares a passion for the blueberry farm.

Mrs. Petri stated that she has been in continuous communication with the original owner of the blueberry farm, the owner that planted the 18,000 blueberry bushes, as well as any other person connected to the success of the blueberry farm. She is not opposed to where the Dec's are requesting to have their home placed, she does not feel it will cause any issues. She believes that many of the blueberries located in the area that Mr. Dec is requesting to place his home are more damaged than the ones closer to the road.

Mr. Petri noted that their house will be located closest to where Mr. Dec is requesting to build his house, much closer than 550 ft. and he has no objections to the request or plans. Mr. Petri stated that if for some reason he does not like something with Mr. Dec's home, he will plant trees himself to create a buffer.

It was well known that the lot had been for sale for many years, anyone that has an issue with where Mr. Dec is requesting to place his house, had equal opportunity to purchase the property in order to prevent that.

Mr. Bleuer stated for the record that a letter has been received from Jim Purcell of 5745 Shimerville Road and has been sent to the full Zoning Board of Appeals for their review. Additional correspondence was received from Mr. Purcell today as well, with a number of items that he has reiterated from the previous meeting. He specifically notes a concern regarding neighbor notifications, as well as his belief that the matter should receive a procedural denial.

Mr. Bleuer stated that the Planning Office sent out Neighbor Notifications to all adjacent neighbors, and have received correspondence from Jaweed Shariff located at 5715 Shimerville Road which has also been provided to the full board, and are on file.

Both of those comments are in opposition to the variance.

Mr. Krey asked where Mr. Purcell lives, Mr. Bleuer confirmed Mr. Purcell lives at 5745 Shimerville Road.

Mr. Michnik confirmed that both of the properties are located in front of Mr. Dec's property, Mr. Dec responded yes, they are located on Shimerville Road.

Mr. Dec stated that he is eager to get started on the revitalization of the blueberry bushes, making every effort to preserve as many bushes that he can.

Mr. Skaine commented that Mr. Purcell suggests in his letter that the board takes in to consideration drainage, as well as the location of flood plain. Mr. Skaine noted that this is not within the Zoning

Board's jurisdiction, and is handled through the Engineering and Building Departments. This board is looking solely at the setback variance request brought forth by Davmicor, Inc.

ACTION:

Motion by Raymond Skaine seconded by Daniel Michnik to **approve** Appeal No. 2 under Old Business, as written.

ON THE QUESTION:

Patrick Krey commented that in terms of some of the concerns from the neighbors, and as witnesses present at the meeting stated, the neighbors located at 5745 and 5715 Shimerville Rd. can put up berms and trees in their own backyards to shield their views. They currently have a structure behind their homes, so there is not any change in terms of what they are going to see, aside from an additional home.

Mr. Krey stated that he does not believe it will change the character of the neighborhood, nor is it a detriment to any of the nearby properties by granting the variance.

Ultimately, all this board is doing is granting a setback variance.

Raymond Skaine	Aye	Patrick Krey	Aye	Patricia Burkard	Aye
Daniel Michnik	Aye				

MOTION CARRIED

ZBFA
11-9-2021

ACTION:

Motion by Ryan Mills, seconded by Richard McNamara for a **rehearing** in relation to a prior agenda item, Appeal No. 2 under Old Business from the November 9, 2021 meeting. The reason for the motion is because two of the primary Zoning Board of Appeals Board Members were absent from the meeting. There is pending litigation in regards to the meeting, and Chairman Mills feels that it is important all board members are present for this agenda item.

Patricia Burkard	Aye	Raymond Skaine	Aye	Richard McNamara	Aye
Patrick Krey	Aye	Ryan Mills	Aye		

MOTION CARRIED

Mr. Bengart stated that this motion means that the Appeal can be re-heard. It will be put on an agenda, and reheard by the Zoning Board of Appeals. At that time, the board will choose to take whatever action it sees fit.

ZBA 1-11-2022

Appeal No. 2 (from the October and November, 2021 meetings)

Davmicor, Inc
Residential Single-Family

Rehearing

Applicant requests a variance of 588' to allow a 753' front yard setback for the construction of a single family home located at 5695 Shimerville Road.

Town Code Reference;
§229-52 (A)

Chairman Mills explained that this is a rehearing, and that upon a rehearing the Zoning Board may reverse, modify, or annul its original order of decision or determination upon a unanimous vote of all members present.

DISCUSSION:

Colin Knoer, representing Davmicor, Inc was present virtually to explain this request. Davmicor has also submitted a formal written statement addressing their request which will track what is said tonight.

Mr. Knoer stated the property is located at 5695 Shimerville Road, and has been operated as a blueberry farm since 2008. Davmicor acquired the property in the summer of 2021 with the intent of building a home and revitalizing the blueberry fields, which have fallen in to disrepair.

Davmicor is requesting a setback variance. The relevant ordinance setback is 165 ft., and they are asking for a variance to allow a setback of 753 ft. which will allow Davmicor to construct this home towards the rear of the parcel with access off a private road that comes off of Shimerville Road.

This location would join several other houses already far off of Shimerville Road, with access via the private road. There are additional houses with deeper setbacks which are not accessible through the private road.

Davmicor is requesting this variance in order to protect the portions of the blueberry field that are located closer to Shimerville Road, which are also the sections that the public is able to see and enjoy from the public thoroughfare. Davmicor believes that it is important for the community to retain these views of an open agricultural field, especially in the times of receding agricultural land. This belief is supported by the Town of Clarence, as the Town Code, Clarence 2030 Master Plan, as well as the Green Print Program all emphasize the importance of maintaining these agricultural spaces. Maintaining them in such a way that it contributes to the aesthetic of the Town of Clarence, while also making these spaces accessible to the public. Mr. Knoer quoted the Town of Clarence 2030 Master Plan by stating "these scenic vistas and open space that they provide is a defining attribute of Clarence's landscape"

Mr. Knoer stated that they have some photos to share, which illustrate the \$27,000 investment that Davmicor has already made to repair and maintain these blueberry fields. They have begun with the front 1 acre of the property, which as the photos illustrate, has made a significant improvement already.

Mr. Bengart asked Mr. Knoer if these photos have already been sent to the Planning Office, Mr. Knoer responded that this PowerPoint presentation is comprised from photos he selected today.

ZBA 2-8-2022

Mr. Bengart requested that Mr. Knoer submit the photos to the Planning Office at the conclusion of this meeting, so that they are made part of the file.

Chairman Mills asked Mr. Knoer to identify the photos and slides that he is showing. Mr. Knoer stated that there are 17 slides total, which he will send to Mr. Bleuer via email.

Mr. Knoer identified the slides as he explained each one;

- Slide no. 3 is a photo of the blueberry farm taken from the center of the property, the house located at 5745 Shimerville Rd. is visible in the background.
- Slide no. 4 is a photo of the blueberry fields similar to slide 3, but taken from further back on the parcel, and shows the full extent of the fields. It also shows most of the overgrowth of the field, which is a problem for the fields themselves.
- Slide no 5. is a photo taken in the fall, when the fields are more dormant with overgrown and the dead crop more obvious.
- Slide no. 6 is a more recent photo, showing the overgrown fields again.

Mr. Knoer reiterated that Davmicor is working to revitalize the field, with the purchase of equipment as well as labor.

- Slide no. 7 is a photo of the freshly trimmed bushes. They have been trimmed, pruned and are ready for the spring. Davmicor is hopeful that, due to this work, the bushes will be able to rebound in the growing season.
- Slide no. 8 is another before photo of dead and overgrown bushes. This is the important section of the field, which is up closest to Shimerville Road. Shown in the rear left is 5715 Shimerville Road as well as some of the other houses that are set back further off of the road.
- Slide no. 9 shows that same portion of the field with the significant amount of work that has been put in to it thus far.
- Slide no. 10 shows more overgrowth of the fields.
- Slide no. 11 again shows the significant improvement that has been performed by the investment.
- Slide no. 12 is a phot that they received from the FaceBook page of the prior owner, which illustrates what the fields are supposed to look like.
- Slide no. 13 is another photo from the FaceBook page of the prior owner which shows the section that fronts the road, when it was in its prime.
- Slide 14-16 are close ups of the blueberries that were taken from the prior owner's photos on Facebook, dated 2016.

Mr. Knoer stated that it comes down to the various factors and the balancing test that the Zoning Board of Appeals needs to look at when addressing a request of this type.

These factors look to the benefit that the applicant will receive, which is the preservation of the blueberry fields that is not only a benefit to Davmicor, but also to the Town of Clarence as it promotes the goals of the 2030 Master Plan.

Mr. Knoer reviewed the following points when hearing a variance request:

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Whether an undesirable change will be produced in the character of the neighborhood. The answer to this is no. As you can see in the overhead view that they submitted in their written papers, the proposal for the location of the home fits well with the location of the other homes around it along that stretch of Shimerville Rd. There is no geometric pattern, and there are actually more homes in this stretch of road that are set further back from Shimerville Rd. than within 165'. Mr. Knoer added that granting the variance would avoid the undesirable destruction of visible portions of the blueberry field.

In regards to the question as to whether granting the appeal would be a detriment to nearby properties, Mr. Knoer noted that it would not, as the home would be in the view of the homes that are built along Shimerville Road, but it certainly will not be the only one, as there are several other houses back there. There will not be a sudden change from undisrupted greenery to suddenly a building. There is no specific landmark that would be blocked from view, and no concerns about light, air quality, or noise. These factors all help to mitigate and minimize any direct impact of the proposed home.

Mr. Knoer stated that the variance would actually be a benefit to the other properties, because the Town of Clarence 2030 Master Plan found that properties adjacent to this type of preserved green space see an increase in property values.

Mr. Knoer stated that regarding the question as to whether there is a feasible alternative for the applicant, the answer is no. Without a variance the only way to build a home would be by removing the most visible portion of the blueberries that Davmicor thinks is the most important to protect.

Mr. Knoer remarked that while the variance is numerically substantial, the impact of the variance would not be, because of the other homes in the vicinity and the imposed construction would not seem out of place.

In regards to whether granting the variance would cause an adverse physical impact, the answer is no, because the impact of the house is the same regardless of where it is built. The variance would prevent crowding that stretch of Shimerville with another house. The driveway may be longer, but even if the house was built with 165' of frontage, a longer driveway may be necessary for the farming operations. Mr. Knoer reiterated his statement that this variance avoids any adverse impact on the neighborhood and the Town of Clarence by allowing Davmicor to retain the existing blueberry fields.

Mr. Knoer responded to the final directive, as to whether the difficulty was self-created, stating that it was not. Davmicor purchased the property with the blueberries already there, and are attempting to retain them to the best of their abilities. It is not a scenario where Davmicor has done something at the property that has forced them in to a corner.

Looking at the balance of the benefit of Davmicor against the health, safety, and welfare of the community at large, the benefit is to the whole town, by protecting the greenspace, and there is no real detriment to the health, safety, and welfare of the community at large. The balance is between the public's view of these fields and the view of the home in the rear by other neighbors.

Mr. Knoer stated that he is aware of an issue that has been raised regarding a curb-cut, and this proposed construction would make the house accessible from the already existing private drive and also avoid making any new curb cuts on Shimerville Road.

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Mr. McNamara asked if there is a reason that they are not cutting in to the driveway to the east, rather than cutting more of the blueberries down. Mr. Knoer responded that the proposed driveway is coming from an already existing private drive, past the blueberries. If the driveway was coming from Shimerville Road then they would need to remove and destroy the blueberry bushes closest to the road that they are attempting to preserve.

Mr. McNamara clarified that he is referring to the existing black top driveway located to the east, which would be a much shorter driveway and less disturbing of the blueberries. Chairman Mills noted that Mr. McNamara is referring to the east drive closest to the second accessory structure, where there is already existing pavement. Chairman Mills pointed out the location on a site plan that was included by Mr. Knoer for this meeting, Chairman Mills labeled this diagram Exhibit A.

Mr. Knoer looked to Mr. Dec for clarification on this question. Mr. Dec responded that the front of the house on the site plan is facing south. When they were looking at which way to bring the driveway in, they chose to have it come in to the front of their house and not in from the side.

Chairman Mills noted that perhaps from a visual, aesthetic standpoint Mr. Dec prefers the long driveway, which is accomplished to a certain extent by the easement long drive. Chairman Mills asked Mr. Dec if he'd consider bringing the driveway in halfway from the eastern driveway, and eliminate the full long winding driveway. Mr. Dec stated that they liked the aesthetics of the long winding drive, as he said previously in the November meeting. They view this as a family estate so they planned some of their landscaping plan around the driveway, appreciating how nice it would look. Mr. Dec stated that they are still keeping the blueberries along the east side of the driveway by cutting a path through, not eliminating acreage of blueberries.

Chairman Mills asked what the contemplated width of the driveway is, Mr. Dec responded that he does not know right now, it would need to be engineered.

Chairman Mills asked Mr. Dec whether he has given any consideration to a berm along the western side of his new structure. Mr. Dec responded that they cannot put a berm in there, as was supported by the Cornell Cooperative Extension from their survey of the property. Mr. Dec stated that Cornell stated that it would cause drainage issues for the blueberries and it would be untenable to place a berm there. Chairman Mills affirmed that would also be along the west side, adjacent to the house and Mr. Dec responded yes that is correct.

In Regards to Public Participation, the following spoke:

1. Jeff Palumbo from Barclay Damon representing the adjacent property owner, Mr. and Mrs. Purcell of 5745 Shimerville Rd.

Mr. Palumbo stated that the central question that he asks the Zoning Board to concentrate on is the same question that is concentrated on in every area variance. Simply put, what is the benefit to the applicant? Mr. Dec must prove that the benefit to him and having this variance granted outweighs any potential detriment to the health, safety, and welfare of the neighborhood. Mr. Palumbo asked what Mr. Dec has identified is the benefit to him? When Mr. Palumbo hears Mr. Dec's submittal along with what has been presented today, he only hears what a benefit to the public and having blueberries on the frontage.

Mr. Palumbo referred to page 2 of Mr. Dec's application where he clearly states it is "specifically important to maintain the portions of the blueberry field located closest to Shimerville Road and most visible to the public." Mr. Palumbo stated that is a benefit it is to the public, it is not a benefit to Mr. Dec.

Mr. Palumbo stated that Davmicor would like to preserve the public's view of these fields. The law is very clear, but this is a benefit to the public, it is to be a benefit to the applicant. Mr. Palumbo pointed out that Mr. Dec repeatedly states this within his application.

Mr. Palumbo specifically pointed out on page 4 of the application submittal, Mr. Dec states "Davmicor cannot achieve its stated goal of protecting the public's view of the blueberry fields without an area variance." Mr. Palumbo stated that is not the standard, and it is not necessary to get in to the factors, because clearly there is no benefit here. According to Mr. Palumbo, Mr. Dec admitted to the Zoning Board of Appeals at the last hearing, that he is going to remove approximately two acres of blueberries. Whether that is in the front or in the back, Mr. Dec will be removing blueberries.

Mr. Palumbo stated that Mr. Dec purchased this property knowing it is a blueberry field, and knowing what the setbacks are. He cannot come to this board now saying that he is protecting the public by placing his house that he wants to build with the setback from Shimerville Road, in direct view of Mr. Purcell's property.

Mr. Palumbo continued to address the multiple ways that Mr. Dec pointed out within his application how the variance would be a benefit to the public, but failed to mention how it would be a benefit to Mr. Dec.

Mr. Palumbo stated that if the factors are to be considered, given the fact that as Mr. Palumbo states, there is no benefit, then the undesirable change needs to be considered. Mr. Palumbo further stated that the applicant asking for a setback variance of 780 ft. for construction of his home has nothing to do with preserving the blueberry fields for the public. The blueberry farm is there whether the house is located in the front or in the back.

Mr. Palumbo stated that the proposed house is directly behind his client's house, and approximately 500+ ft. away from his client's house. Mr. Palumbo noted that as the board stated in a previous meeting, that nothing can be done to protect his applicant from the potential environmental impacts of this project. Mr. Palumbo stated that because someone told him that they cannot do it, there is no proof of that and Mr. Palumbo said to put it in evidence that there is no way to put a berm up.

Mr. Palumbo stated that one of the factors is whether there will be an environmental impact on the neighborhood by granting the variance. The board has stated that none of the conditions which are normally imposed to help mitigate a situation are not being granted. Mr. Palumbo stated that these are conditions that the board often grants in many other cases, but now it can't be done.

Mr. Palumbo stated that there is clearly an undesirable change to the neighborhood, to his client's property, as well as to neighbor's property on the opposite side of the street. He stated that this variance is enormous, which leads to the factor as to whether the request is substantial, which is an important factor, and one that this board has focused on multiple times in the past with other variance requests.

Mr. Palumbo noted that one of the other factors that he feels has been downplayed, is whether or not there are feasible alternatives. Mr. Palumbo stated that the applicant has indicated there are no feasible alternatives, citing the blueberries. Mr. Palumbo said that the feasible alternative is to place the house

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165' back from the road, as is allowable by code. To use the excuse that placing the house in that location would distort the public's view of the blueberries is ridiculous.

Mr. Palumbo next stated that while he is not a blueberry expert, he understands that there was an issue of a bug infestation with the prior blueberry field. Mr. Palumbo commented that he isn't sure how that is remedied, whether by with pesticides that will be sprayed immediately adjacent to the existing homes. This issue hasn't been addressed, and could have an environmental impact on adjacent property owners.

Mr. Palumbo discussed the last factor, which is whether or not the variance is self-created, by noting that this is a perfect example of a variance being self-created. As Mr. Palumbo previously indicated, Mr. Dec purchased this property knowing that it was a blueberry field. The fact that Mr. Dec has spent \$27,000 is his issue, and has nothing to do with the variance. Mr. Palumbo reiterated that Mr. Dec purchased this property knowing that the setback was 165', not in the 700' category.

Mr. Palumbo stated that he doesn't feel the factors need to be considered, but if they do, that it is clear the health, safety, and welfare clearly outweighs any benefit that still hasn't been expressed by the applicant.

Chairman Mills asked Mr. Palumbo about his comments made regarding a berm, and inquired whether it is his client's position that he would like a berm to mitigate the visual effects of this variance, if it is granted.

Mr. Palumbo responded that if it is granted, they would absolutely like some mitigation for his client. Mr. Palumbo added that his first response is to not grant the variance, then there's no need to consider a berm.

Chairman Mills asked if aside from a denial of the variance, whether Mr. Palumbo's client would consider a berm or a fence, as some form of mitigation. Mr. Palumbo responded that a fence would not help, the only thing that could potentially help would be a berm with pine trees on top.

2. Adam Petri of 5665 Shimerville Rd. Mr. Petri stated that 5665 Shimerville Rd. is a new build off of the private drive that comes in off of Shimerville Rd.

- Mr. Petri has one of the closest views of the applicant's property and the potential new build that would go up on the property.
- Doesn't feel it will have an impact on his view or property, but if it did he would put up a berm and some trees on his own property in order to provide himself the privacy that he was seeking.
- In regards to the aesthetics of the road, Mr. Petri stated that in his opinion, he would prefer to be set back further off of the road also.
- As a close neighbor to the applicant and in the neighborhood, Mr. Petri does not have any issues with the variance request.

Public Participation for this item was closed.

Chairman Mills asked Mr. Dec or his attorney, in regards to the comment that Cornell Extension had stated that it would be detrimental to the blueberries to put in a berm, would they elaborate on that. Mr. Dec responded that it is already significantly wet on the property, and water affects blueberry growth significantly. Putting a berm up on their west side of the property would create a larger drainage issue in to the blueberries. Mr. Dec stated that they are happy to plant pine trees on the west property line. They grow tall and provide a great obstruction of view.

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Chairman Mills noted that Mr. Dec identified a berm as a problem due to the water, but that he would be willing to plant pine trees to mitigate a visual buffer.

Mr. McNamara spoke in regards to the berm and drainage, as he is facing a similar situation, which he has had to mitigate with drainage. Mr. McNamara stated that when building a new home, it is often necessary to run some type of drainage for all of the down spouts, running it to some location whether it is a street curb or an on-property pond. Mr. McNamara stated that installing the drainage to help mitigate the berm, may also help the blueberries.

Chairman Mills asked Mr. Dec if he has considered some kind of drainage for the berm. Mr. Dec responded that he knows they'll have to have drainage at the house, but locating a berm that far from the west property line which would end up needing to be two separate drainage plans. Mr. McNamara pointed out that it can be done, to which Mr. Dec responded that if they were able to plant pine trees without a berm, they would not have a drainage issue.

Chairman Mills asked Mr. Dec about placing a berm with pine trees closer to their house, Mr. Dec replied that it would cause them to have to remove more blueberries. Chairman Mills noted that while he understands that, there is greenspace around Mr. Dec's proposed house, and perhaps a berm can be built with some pine trees. This will block the visual aspect of the proposed home from Shimerville Road.

Mr. Dec stated that if the main goal is height of the obstruction, he doesn't understand why pine trees on their own wouldn't be substantial mitigation. Mr. Dec also stated that he would be happy to plant mature pine trees, so that they are already at an adequate height. Mr. Dec stated that he has no interest in putting in a berm that requires that much more drain work, and would be more of a detriment to the existing agricultural field.

Chairman Mills asked Mr. Palumbo what his client's thoughts are in regards to mature pine trees without a berm to provide a visual buffer. Mr. Palumbo stated that while future generations may benefit from pine trees, there is no benefit to his client or the adjacent property owner. Mr. Palumbo doesn't believe that trees alone at this point will be of any benefit as a buffer.

Mr. Palumbo stated that looking at the drawings, he notes that there are two different sizes of buildings, there is a barn and a garage and wondered if the board is aware of the size of any of these structures.

Chairman Mills noted that a site plan was submitted, without dimensions of any of the structures. The site plan was dated 10/20/2021.

Chairman Mills asked Mr. Dec what the anticipated size of his primary structure will be, Mr. Dec responded that it will be approximately 4,000-5,000 sq. ft. Mr. Dec stated that he doesn't believe the accessory structures are an issue of this variance request.

Chairman Mills responded, stating an understanding the accessory structures are not a matter of the variance, they are relevant due to their size. The tentative contemplated sizes are 50' by 30' and 50' by 40', but those sizes are not confirmed yet.

Mr. Palumbo stated that another question to ask is what happens two years from now when there is no blueberry field because of infestation, or anything else. There will not be a blueberry field for the public to enjoy looking at, but there will still be a giant structure placed in the backyard of his client's property.

Chairman Mills asked Mr. McNamara what is reasonable in terms of the height of mature pine trees from a cost perspective as well as the feasibility of acquiring them.

Mr. McNamara responded that the feasibility of planting trees is basically maxed out at approximately 8 ft. high. From there it takes around 2 years before they start to grow, at which point they will then continue to grow roughly a foot per year.

Mrs. Burkard commented that there was a house built behind her property and they did plant evergreen trees to create a buffer. Mrs. Burkard stated that once the trees were planted, they were not able to see the neighboring house at all, which is only approximately 150-200 ft. from her home. It blocked their view immediately.

Mr. Palumbo stated that there is a big difference between 150' and 500'.

Mr. Dec reminded the board that they are building a single story residence, so 10' trees should block a majority of the house.

Mr. McNamara asked Mr. Dec about the acreage in the front of the proposed location for his home reaching out to Shimerville Road, will Mr. Dec subdivide and build additional houses on the property. Mr. Dec responded that they have no plans to sub-divide the property at all. One area of the property is only 100' wide between the two houses, which according to zoning code is too narrow to build a house on. The other piece of the parcel is the portion that they are revitalizing first, and intend to keep blueberries on. Mr. McNamara asked Mr. Dec what would happen in two years if the blueberries all die, what will happen then. Mr. McNamara asked Mr. Dec if he would be willing to state that they would never subdivide the property at all, keeping it as a single lot.

Mr. Dec responded, as has been discussed at previous meetings they view this lot as a family estate and he cannot say that in the future he wouldn't want one of his children to build a home somewhere on the property. Additionally, agreeing to a restriction that runs with the land would hinder the ability of someone to potentially sell the property.

Mr. McNamara stated that it may be more of a reason to put a berm on the neighbor's land, in the case that they do subdivide, the problems for the future are eased.

Mr. Dec stated that right now he is concerned about the blueberries, Mr. McNamara responded that they are concerned about the future.

Mr. Bengart asked Mr. Dec whether he would consider if this variance was approved, agreeing to a condition that would restrict subdivision of the land limited to family members only. Mr. Dec confirmed he would agree to that condition.

Chairman Mills asked Mr. Dec in regards to the subdivision of land to family members, what he is contemplating as far as a maximum number. Mr. Dec responded that he would agree to a restriction of subdividing only to immediate family members.

Discussion continued regarding the number of building lots that could potentially be subdivided and to whom. Chairman Mills stated that a large component of Mr. Dec's argument is the preservation of the

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aesthetics of the blueberries, and greenspace. If the future brings multiple additional houses, that is disruptive to Mr. Dec's argument. Mr. Dec responded that they have absolutely no plans to subdivide or build any additional houses on the property, but if hypothetically it were to happen, potentially one more house. Mr. Dec reiterated once again that they have no plans to subdivide or build any additional houses.

Chairman Mills asked Mr. McNamara what his recommendation would be in terms of the placement of pine trees distance apart.

Mr. McNamara responded that pine trees should be planted in a staggered row, approximately 15 ft. apart. That way when they reach a height of approximately 30-40 ft. they will not be touching, causing a lower depth die-off of branches.

Mr. Krey asked the applicant to speak on the benefits of the variance request to himself.

Mr. Dec responded, stating that the number one benefit to him is the ability to grow and sell blueberries. As it stands currently, the two acres directly on Shimerville Road which border the common driveway are the healthiest blueberry plants of the entire 8 ½ acres. Mr. Dec stated that they want to maintain those acreages first, which is why they have been focusing revitalization efforts on that section. Mr. Dec stated that the benefit of the variance for him, is that he is able to maintain the healthiest plants that are already there, to grow and operate an existing farm and sell the blueberries to the public.

Chairman Mills asked Mr. Palumbo what his additional comment is, Mr. Palumbo stated that it goes back to the question of not knowing what could happen with this property. They have neglected discussing the Planning Board's decision from 2018, which in reaching their determination under the State Environmental Quality Review Act and the issuance of a Negative Declaration with conditions that included no additional curb cuts beyond those identified on approved site plans dated May 1, 2018. Mr. Palumbo said he doesn't know if they have complied with that, or if any future development of this property whether it's one child or two or three children complies with that condition. Mr. Palumbo noted that others in the Planning Department could comment on that better than he can.

Mr. Palumbo stated that it goes to the point of not knowing what will happen with this property, and this is only the beginning. The benefit that has now been expressed for the very first time by Mr. Dec, is that the healthiest of the blueberries are located in the front of the property, which as Mr. Palumbo states, is because that is where he has been rehabilitating them. Obviously he will rehabilitate all of them, because that is what he has told us that they are going to turn this in to a thriving blueberry farm. Mr. Palumbo commented that whether the front, back, or side is completed first, ultimately they will all be rehabilitated according to Mr. Dec's testimony.

Mr. Palumbo stated that benefit still does not outweigh the benefit to the health, safety, and welfare of the neighborhood.

Chairman Mills asked Mr. McNamara how far off the house is practical to plant pine trees off of the western side of the house. Mr. McNamara responded that there will be concerns with a septic system and where that will be placed, so at least 40-50 ft. away from the house. Mr. McNamara added that the further away from the house, the better it will be for shadowing from the sun in the evening.

ACTION:

Motion by Ryan Mills, seconded by Richard McNamara to approve Old Business Appeal No. 2 with the following conditions;

1. Maximum subdivision of two lots, and only for immediate family members;
2. Along the west area of the property, approximately 50 ft. off of the house line, pine trees to be staggered on a berm with appropriate water controlled engineering. The pine trees are to be at least 6 ft. high, and staggered approximately 15 ft. apart. Subject to referral to the Landscape Committee who may deviate from these suggestions, but should attempt to substantially comply with the same suggestions.

ON THE QUESTION:

Mr. Bengart asked for clarification, as to whether Chairman Mills meant the western most portion which is behind the houses on Shimerville, or the western most portion off of where Mr. Dec intends to put his home.

Chairman Mills confirmed that he means 50 ft. off of the west side of Mr. Dec's home.

Chairman Mills stated that the Landscape Committee will sort it out in more detail as appropriate. He believes that the record reflects what they are looking for in terms of visual privacy buffer for Shimerville Road.

Mr. Krey asked whether the applicant should be asked if he is in agreement of these conditions.

Mr. Dec responded that if he is going to agree to put a berm in, he would prefer that it be on the eastern line of the neighbor's lots as opposed to closer to his house. Because they plan to operate this as an ongoing farm, if he puts a berm and trees close to his house it will obstruct his ability to maintain the blueberry rows as they currently exist. In addition, it will obstruct his view of the fields, which is a large part of why he wants his house where they'd like it placed. He would be more interested in putting the berm and trees on or close to the lot line.

Mr. Dec stated that this location would not only be in agreement with what the board is requesting, but also provide coverage for the neighbors to view the property.

Chairman Mills asked Mr. Palumbo and his client what their thoughts are regarding a berm or pine trees along the rear of Mr. Palumbo's client's parcel.

Mr. Palumbo stated that he doesn't agree with it either way, so it is ultimately up to the Zoning Board.

Chairman Mills stated that he would like to incorporate all prior hearings, their minutes and exhibits in to the record. All files, communications, everything of that neighbor which relates to this up to this point in time included in the board's decision as well as in the record. This also includes the evidence which has been presented this evening.

Chairman Mills noted that as a board they are asked to look at Town Law section 267 and the five criteria. They have heard a substantial amount of criteria from both sides in regards to those five components which are as follows:

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- a. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
 - Chairman Mills does not believe that there would be an undesirable change in the character of the neighborhood, or a detriment to nearby properties based up on the evidence that they have heard. Each variance is unique in its own right, and this is a very unique parcel in shape, size, and the fact that it is densely covered in blueberries. Based upon that, the placement of this home will help preserve a lot of the blueberries and taking in to account views from not just the neighbors on Shimerville, but all of the neighbors that surround this particular parcel.
- b. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
 - Chairman Mills stated that while there are other possible placements on this parcel for the home, it appears from a strategic standpoint of preserving blueberries, as well as taking in to account all views from nearby neighbors as well as environmental conditions which they have heard and are in the record, this is an optimal location.
- c. Whether the requested area variance is substantial;
 - Chairman Mills noted that while this particular point is up for debate, whether it is substantial alone is not dispositive in a variance but rather is to be taken in to account. Again, due to the uniqueness of this parcel, being covered in blueberries as well as how the homes are situated around it, this does not appear to be substantial when weighing in all of those factors.
- d. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - Chairman Mills responded that he does not believe the record indicates any adverse effects on the physical or environmental conditions with its placement as proposed. It would not be any different if it was placed up closer to Shimerville Road. Any home placement will have some impact on a lot.
- e. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.
 - Chairman Mills stated that an argument could be made that this was self-created to a certain extent, however, the blueberry farm is unique in its nature. When taking in to consideration all of that work that was done as well as all of the views of nearby parcels, this appears to be a favorable location for the preservation of views from Shimerville as well as views and aesthetic considerations from all the nearby neighbors.

Mr. Bleuer stated that any future lot split or subdivision proposals would be subject to an environmental review through the State Environmental Quality Review Act, and taking in to account all code that is in place at that time.

Mr. Krey stated that he agrees with Chairman Mills, and also in his own opinion, looking at the property along the street, he does not believe that it will produce any undesirable changes by granting this area variance. There are other houses that are setback at different distances from the street as well as other houses set even further back.

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Mr. Krey stated that in regards to the neighbors who feel they are being negatively impacted, he believes the conditions being imposed will mitigate that in terms of the view, because there will be natural screening which will alleviate their concerns about the view.

Mr. Krey also reiterated what Chairman Mills stated, that there will not be any adverse effect or impact on the physical environment or conditions of the neighborhood. If anything, it will maximize the usage of the blueberry farm, keeping the preexisting view of the farm mostly intact.

Mr. Bleuer added that the general practice of the Landscape Committee to review landscape plans that are submitted. Based on the condition on the table stating landscape review, Mr. Bleuer would expect that would include a landscape plan being submitted by the applicant for review by the Landscape Committee.

Mr. Bengart added that Mr. Bleuer will be able to explain what the applicant will need to provide for the Landscape Committee, Mr. Bleuer confirmed this.

Richard McNamara	Aye	Patrick Krey	Aye	Raymond Skaine	Aye
Patricia Burkard	Aye	Ryan Mills	Aye		

MOTION CARRIED UNANIMOUSLY